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HEARINGS ON S. RES. 301

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HEARINGS
BEFORE A
SELECT COMMITTEE TO STUDY
CENSURE CHARGES
UNITED STATES SENATE

EIGHTY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO THE ORDER ON

S. Res. 301

AND AMENDMENTS

**A RESOLUTION TO CENSURE THE SENATOR FROM
WISCONSIN, MR. McCARTHY**

AUGUST 31, SEPTEMBER 1, 2, 7, 8, 9, 10, 11, 13 AND 17, 1954

PART 1

Printed for the use of the Select Committee on S. Res. 301



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U.S. Congress. Senate. Select Committee on
" Study and Administration "

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UNITED STATES

GOVERNMENT PRINTING OFFICE

WASHINGTON : 1954

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HEARINGS ON SENATE RESOLUTION 301

TUESDAY, AUGUST 31, 1954

UNITED STATES SENATE,
SELECT COMMITTEE TO STUDY CENSURE CHARGES PURSUANT
TO SENATE ORDER ON SENATE RESOLUTION 301,
Washington, D. C.

The select committee met, pursuant to notice, at 10:20 a. m., in the caucus room, Senate Office Building, Senator Arthur V. Watkins (chairman) presiding.

Present: Senators Watkins (chairman), Johnson of Colorado (vice chairman), Stennis, Carlson, Case, and Ervin.

Also present: Senator McCarthy; E. Wallace Chadwick, counsel to the committee; Guy G. deFuria, assistant counsel to the committee; John M. Jex, clerk of the committee; John W. Wellman, staff member; Frank Ginsburg and Ray R. McGuire, members of Senator Watkins' staff on loan to the committee; and Edward Bennett Williams, counsel to Senator McCarthy, with his associates, Agnes A. Neill and Brent Bozell.

The CHAIRMAN. There will now be placed in the record Senate Resolution 301 of the 83d Congress, together with the amendments proposed thereto and the order of the Senate dated August 2, 1954, which set up this committee and referred that resolution and those amendments to us.

(The matter referred to is as follows:)

[S. Res. 301, 83d Cong., 2d sess.]

ORDER

Ordered, That S. Res. 301, to censure the Senator from Wisconsin, Mr. McCarthy, submitted by Senator Flanders on July 30, and amendments proposed thereto, be referred to a select committee as provided in the motion set forth below and agreed to by the Senate on Monday, August 2 (legislative day, Friday, July 2, 1954):

"Mr. President, I move to refer the pending resolution (S. Res. 301) together with all amendments proposed thereto, to a select committee to be composed of 3 Republicans and 3 Democrats who shall be named by the Vice President: *And ordered further*, That the committee, which shall be authorized to hold hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate, to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, and to take such testimony as it deems advisable, and that the committee be instructed to act and make a report to this Body prior to the adjournment sine die of the Senate in the second session of the 83d Congress.

[S. Res. 301, 83d Cong., 2d sess.]

RESOLUTION

Resolved, That the conduct of the Senator from Wisconsin, Mr. McCarthy, is unbecoming a Member of the United States Senate, is contrary to senatorial traditions, and tends to bring the Senate into disrepute, and such conduct is hereby condemned.

[S. Res. 301, 83d Cong., 2d sess.]

PROPOSED AMENDMENT Proposed by Mr. Fulbright to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

On page 1, line 5, after the word "condemned", strike the period and insert the following: "for the following reason:

"(1) The junior Senator from Wisconsin, while a member of the committee having jurisdiction over the affairs of the Lustron Company, a corporation financed by Government money, received \$10,000 without rendering services of comparable value;"

[S. Res. 301, 83d Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Fulbright to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

On page 1, line 5, after the word "condemned", strike the period and insert the following: "for the following reason:

"(2) In public hearings, before the Senate Permanent Investigations Subcommittee, of which he was chairman, the junior Senator from Wisconsin strongly implied that Annie Lee Moss was known to be a member of the Communist Party and that if she testified she would perjure herself, before he had given her an opportunity to testify in her own behalf;"

[S. Res. 301, 83d Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Fulbright to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

On page 1, line 5, after the word "condemned", strike the period and insert the following: "for the following reason:

"(3) Although repeatedly invited to testify by a committee of this Senate headed by the Senator from Iowa, the junior Senator from Wisconsin denounced the committee and contemptuously refused to comply with its request;"

[S. Res. 301, 83d Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Fulbright to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

On page 1, line 5, after the word "condemned", strike the period and insert the following: "for the following reason:

"(4) Without justification, the junior Senator from Wisconsin impugned the loyalty, patriotism, and character of General Ralph Zwicker;"

[S. Res. 301, 83d Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Fulbright to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

On page 1, line 5, after the word "condemned", strike out the period and insert the following: "for the following reason:

"(5) The junior Senator from Wisconsin openly, in a public manner before nationwide television, invited and urged employees of the Government of the United States to violate the law and their oaths of office;"

[S. Res. 301, 83d Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Fulbright to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

On page 1, line 5, after the word "condemned", strike out the period and insert the following: "for the following reason:

"(6) The Junior Senator from Wisconsin in a speech on June 14, 1951, without proof or other justification made an unwarranted attack upon General George C. Marshall."

[S. Res. 301, 83d Cong., 2d sess.]

AMENDMENT (in the nature of a substitute) Intended to be proposed by Mr. Smith of New Jersey to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

Strike out all after "*Resolved*," and insert in lieu thereof the following: "That the Senate views with real concern the growing divisiveness and disunity in the Senate and throughout the country over the problems created by the fact that there had been infiltration of Communists and other security risks into sensitive positions, and the methods and procedures employed in exposing and eliminating such security risks; and be it further

"*Resolved*, That it is the immediate responsibility of the Senate to deal with this critical situation in an objective, judicial, and statesmanlike manner; and be it further

"*Resolved*, that the Vice President of the United States immediately appoint a special bipartisan committee of the Senate to investigate and report with recommendations to the Senate on this controversial matter. The committee shall be composed of six Senators, three of whom shall be nominated by the Republican Policy Committee, and three by the Democratic Policy Committee. The Vice President shall be ex officio chairman of the group. The committee shall report with recommendations to the Senate not later than February 1, 1955."

[S. Res. 301, 83d Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Morse to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

On page 1, lines 4 and 5, strike out the words "and such conduct is hereby condemned," and insert in lieu thereof the following: "because the said Mr. McCarthy—

"(a) declined to comply with a request made by letter on November 21, 1952, by the chairman of the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration, that he appear before the subcommittee to supply information concerning certain specific matters involving his activities as a Member of the Senate;

"(b) unfairly accused his fellow Senators Gillette, Monroney, Hendrickson, Hayden, and Hennings of improper conduct in carrying out their duties as Senators;

"(c) as chairman of a committee resorted to abusive conduct in his interrogation of General Ralph Zwicker, including a charge that General Zwicker was unfit to wear the uniform, during the appearance of General Zwicker as a witness before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations on February 18, 1954;

"(d) received and made use of confidential information unlawfully obtained from a document in executive files upon which document the Federal Bureau of Investigation had placed its highest classification; and offered such information to a lawfully constituted Senate subcommittee in the form of a spurious document which he falsely asserted to the subcommittee to be 'a letter from the FBI.';

"(e) openly invited and incited employees of the Government to violate the law and their oaths of office by urging them to make available information, including classified information, which in the opinion of the employee would be of assistance to the junior Senator from Wisconsin in conducting his investigations, even though the supplying of such information by the employee would be illegal and in violation of Presidential order and contrary to the constitutional rights of the Chief Executive under the separation-of-powers doctrine;

"(f) attempted to invade the constitutional power of the President of the United States to conduct the foreign relations of the United States by carrying on negotiations with certain Greek shipowners in respect to foreign trade policies, even though the executive branch of our Government had a few weeks previously entered into an understanding with the Greek Government in respect to banning the flow of strategic materials to Communist countries; and

"(g) permitted and ratified over a period of several months in 1953 and 1954 the abuse of Senatorial privilege by Mr. Roy Cohn, chief counsel to

the Permanent Investigations Subcommittee of the Senate Committee on Government Operations of which committee and subcommittee the junior Senator from Wisconsin is chairman, Mr. Cohn's abuse having been directed toward attempting to secure preferential treatment for Private David Schine by the Department of the Army, at a time when the Army was under investigation by the committee.

"Sec. 2. It is the sense of the Senate that such conduct is hereby condemned."

[S. Res. 301, 83d Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. BUSH to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

Strike out all after "*Resolved*," and insert in lieu thereof the following: "That rule XV of the Standing Rules of the Senate is amended by inserting at the end thereof the following:

"'3. All bills and resolutions to authorize the investigation of a particular subject matter shall define such subject matter clearly, and shall state the need for such investigation and the general objects thereof.'

"Sec. 2. Rule XXV of such Standing Rules is amended by deleting the title 'standing Committees' and inserting in lieu thereof 'Powers and Duties of Committees'.

"Sec. 3. Paragraph (b) of subsection 3 of such rule XXV is amended to read as follows:

"'(b) Unless the committee otherwise provides, one member shall constitute a quorum for the receipt of evidence and the taking of testimony; but no witness shall be compelled to give oral testimony before less than two members if, prior to testifying, he objects to the presence of only one member.'

"Sec. 4. Such rule XXV is amended by inserting at the end thereof the following subsections:

"'5. The rules of the committees shall be the rules of the subcommittees so far as applicable. Committees and subcommittees may adopt additional rules not inconsistent with the rules of the Senate.

"'6. All hearings conducted by committee shall be open to the public, except executive sessions for marking up bills or for voting or where the committee by a majority vote orders an executive session.

"'7. Unless otherwise provided, committee action shall be by vote of a majority of a quorum.

"'8. An investigating subcommittee of any committee may be authorized only by a majority vote of the committee.

"'9. No committee hearing shall be held unless specifically authorized by the committee.

"'10. No committee hearing shall be held in any place outside of the District of Columbia unless authorized by a majority vote of the committee.

"'11. No measure, finding, or recommendation shall be reported from any committee unless a majority of the committee were actually present.

"'12. No testimony taken or material presented in an executive session shall be made public, either in whole or in part or by way of summary, unless authorized by a majority vote of the committee.

"'13. No person shall be employed for or assigned to investigate activities until approved by the committee.

"'14. Unless otherwise provided, subpoenas to require the attendance of witnesses, the giving of testimony, and the production of books, papers, or other evidence shall be issued only by authority of the committee, shall be signed by the chairman or any member designated by the chairman, and may be served by any person designated by the committee, the chairman, or the signing member.

"'15. No witness shall be compelled to give oral testimony for broadcast, or for direct reproduction by motion picture photography, recording, or otherwise in news and entertainment media if he objects.

"'16. Oaths may be administered and hearings may be conducted and presided over by the chairman or any member designated by the chairman.

"'17. Witnesses shall be permitted to be advised by counsel of their legal rights while giving testimony, and unless the presiding member otherwise directs, to be accompanied by counsel at the stand.

"'18. Witnesses, counsel, and other persons present at committee hearings shall maintain proper order and decorum; counsel shall observe the standards of ethics and deportment generally required of attorneys at law. The chairman may punish breaches of this provision by censure or by exclusion from the com-

mittee's hearings, and the committee may punish by citation to the Senate for contempt.

"19. Whenever the committee determines that evidence relating to a question under inquiry may tend to defame, degrade, or incriminate persons called as witnesses therein, the committee shall observe the following additional procedure, so far as may be practicable and necessary for the protection of such persons:

"(a) The subject of each hearing shall be clearly stated at the outset thereof, and evidence sought to be elicited shall be pertinent to the subject as so stated.

"(b) Preliminary staff inquiries may be directed by the chairman, but no major phase of the investigation shall be developed by calling witnesses until approved by the committee.

"(c) All testimony, whether compelled or volunteered, shall be given under oath.

"(d) Counsel for witnesses may be permitted, in the discretion of the presiding member and as justice may require, to be heard briefly on points of right and procedure, to examine their clients briefly for purposes of amplification and clarification, and to address pertinent questions by written interrogatory to other witnesses whose testimony pertains to their clients.

"(e) Testimony shall be heard in executive session, the witness willing, when necessary to shield the witness or other persons about whom he may testify.

"(f) The secrecy of executive sessions and of all matters and material not expressly released by the committee shall be rigorously enforced.

"(g) Witnesses shall be permitted brief explanations of affirmative or negative responses, and may submit concise, pertinent statements, orally or in writing, for inclusion in the record at the opening or close of their testimony.

"(h) An accurate verbatim transcript shall be made of all testimony, and no alterations of meaning shall be permitted therein.

"(i) Each witness may obtain transcript copies of his testimony given publicly by paying the cost thereof; copies of his testimony given in executive session shall be furnished the witness at cost if the testimony has been released or publicly disclosed, or if the chairman so orders.

"(j) No testimony given in executive session shall be publicly disclosed in part only, except when the committee decides that deletions from the transcript are required by considerations of national security.

"20. Whenever the committee determines that any testimony, statement, release, or other evidence or utterance relating to a question under inquiry may tend to defame, degrade, or incriminate persons who are not witnesses, the committee shall observe the following additional procedures, so far as may be practicable and necessary for the protection of such persons:

"(a) Persons so affected shall be afforded an opportunity to appear as witnesses, promptly and at the same place if possible, and under subpoena if they so elect. Testimony relating to the adverse evidence or utterance shall be subject to applicable provisions of subsection 19 of this rule.

"(b) Each such person may, in lieu of appearing as a witness, submit a concise, pertinent sworn statement which shall be incorporated in the record of the hearing to which the adverse evidence or utterance relates.

"21. The chairman or a member shall when practicable consult with appropriate Federal law-enforcement agencies with respect to any phase of an investigation which may result in evidence exposing the commission of Federal crimes, and the results of such consultation shall be reported to the committee before witnesses are called to testify therein.

"22. Requests to subpoena additional witnesses shall be received and considered by the chairman in any investigation in which witnesses have been subpoenaed. Any such request received from a witness or other person entitled to the protections afforded by subsection 19 or 20 of this rule shall be considered and disposed of by the committee.

"23. Each committee conducting investigations shall make available to interested persons copies of the rules applicable therein."

[S. Res. 301, 83d Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. FLANDERS to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

On page 1, line 5, after the word "condemned", strike the period and insert the following: "for the following reasons:

"(1) He has retained and/or accredited staff personnel whose reputations are in question and whose backgrounds would tend to indicate untrustworthiness (Surine, Lavinia, J. B. Matthews).

"(2) He has permitted his staff to conduct itself in a presumptuous manner. His counsel and his consultant (Messrs. Cohn and Schine) have been insolent to other Senators, discourteous to the public, and discreditable to the Senate. His counsel and consultant traveled abroad making a spectacle of themselves and brought discredit upon the Senate of the United States, whose employees they were.

"(3) He has conducted his committee in such a slovenly and unprofessional way that cases of mistaken identities have resulted in grievous hardship or have made his committee, and thereby the Senate, appear ridiculous. (Annie Lee Moss, Lawrence W. Parrish, subpoenaed and brought to Washington instead of Larence T. Parish.)

"(4) He has proclaimed publicly his intention to subpoena citizens of good reputation, and then never called them. (General Telford Taylor, William P. Bundy, former President Truman, reporters Marder, Joseph Alsop, Friendly, Bigrant, Phillip Potter.)

"(5) He has repeatedly used verbal subpoenas of questionable legality. (Tried to prevent State Department granting visa to William P. Bundy on ground that he was under 'oral subpoena'.)

"(6) He has attempted to intimidate the press and single out individual journalists who have been critical of him or whose reports he has regarded with disfavor, and either threatened them with subpoena or forced them to testify in such a manner as to raise the possibility of a breach of the first amendment of the Constitution. (Murrey Marder of the Washington Post, the Alsops, James Wechsler.)

"(7) He has attempted 'economic coercion' against the press and radio, particularly the case of Time magazine, the Milwaukee Journal, and the Madison Capital Times. (On June 16, 1952, McCarthy sent letters to advertisers in Time magazine, urging them to withdraw their advertisements.)

"(8) He has permitted the staff to investigate at least one of his fellow Senators (Jackson) and possibly numerous Senators. Such material has been reserved with the obvious intention of coercing the other Senator or Senators to submit to his will, or for the purpose of inhibiting them from expressing themselves critically. (Cohn said he would 'get' Senator Jackson).—Washington News, June 14, 1954.

"(9) He has posed as savior of his country from communism, yet the Department of Justice reported that McCarthy never turned over for prosecution a single case against any of his alleged 'Communists.' (The Justice Department report of December 18, 1951.) Since that date not a single person has been tried for Communist activities as a result of information supplied by McCarthy.

"(10) He has attacked, defamed, and besmirched military heroes of the United States, either as witnesses before his committee or under the cloak of immunity of the Senate floor. (General Zwicker, General Marshall.)

"(11) He has used distortion and innuendo to attack the reputations of the following citizens: Former President Truman, General George Marshall, Attorney General Brownell, John J. McCloy, Ambassador Charles E. Bohlen, Senator Raymond Baldwin, Former Assistant Secretary of Defense Anna Rosenberg, Philip Jessup, Marquis Childs, Richard L. Strout of the Christian Science Monitor, General Telford Taylor, and the three national press associations.

"(12) He has disclosed restricted security information in possible violation of the espionage laws. McCarthy has made public portions of an Army Intelligence study, Soviet Siberia, which compelled the Army to declassify and release the entire document.)

"(13) He received and held a valuable classified document in possible violation of the Espionage Act. (Revealed in the Army-McCarthy hearings that he had improperly obtained J. Edgar Hoover's report on subversives from the Army, and failed to restore the document to properly authorized hands.) He permitted that document to fall into the hands of a gossip columnist (Walter Winchell).

"(14) He has publicly incited Government employees to violate their security oaths and serve as his personal informants, thus tending to break down the orderly chain of command in the civil service, as well as violate the security provisions of the Government.

"(15) He has used his official position to fix the Communist label upon all individuals and newspapers as might legitimately disagree with him or refuse to acknowledge him as the unique leader in the fight against subversion.

(Deliberate slips such as calling Adlai Stevenson 'Alger'; saying that the American Civil Liberties Union had been 'listed' as doing the work of the Communist Party; calling the Milwaukee Journal and Washington Post local 'editions of the Daily Worker'.)

"(16) He has attempted to usurp the functions of the executive department by having his staff negotiate agreements with a group of Greek ship-owners in London; and has infringed upon functions of the State Department, claiming that he was acting in the 'national interest.'

"(17) He has continued to show his contempt for the Senate by failing to explain in any manner the six charges contained in the Hennings-Hayden-Hendrickson report, which was filed in January 1953. This involves his bank transactions, possible income-tax evasions, and the Lustron deal. The taint persists until he satisfactorily explains these matters, which he refused to do, although invited six times to appear, during the Eighty-second Congress.

"(18) He has made false claims about alleged wounds which in fact he did not suffer. (Claims he was a tailgunner when, in fact, he was a Marine Air Force Ground Intelligence officer * * * claims he entered as buck private, when he entered as a commissioned officer.)

"(19) His rude and ruthless disregard of the rights of other Senators has gone to the point where the entire minority membership of the Permanent Investigating Subcommittee resigned from the committee in protest against his high-handedness. (July 10, 1953.)

"(20) He has intruded upon the prerogative of the executive branch, violating the constitutional principles of separation of powers. (Within a single week (February 14-20, 1953), McCarthy's activities against Voice of America forced the State Department three times to reverse administrative decisions on matters normally considered internal operating procedures: (1) The Department had authorized the use of certain writings by pro-Communist authors as part of their program to expose Communist lies and false promises. McCarthy compelled the State Department to discontinue this practice; (2) the Department authorized its employees to refuse to talk with McCarthy's staff in the absence of McCarthy himself. It was compelled to cancel this directive; and (3) John Matson, a departmental security agent who had 'cooperated' with McCarthy, was transferred so as to be put out of reach of the Department's confidential files. McCarthy compelled the Department to return Matson to his original position.)

"(21) He has infringed upon the jurisdiction of other Senate committees, invading the area of the Internal Security Subcommittee and other committees of the Congress.

"(22) He has failed to perform the solid and useful duties of the Government Operations Committee, abandoning the legitimate and vital functions of this committee.

"(23) He has held executive sessions in an apparent attempt to prevent the press from getting an accurate account of the testimony of witnesses, and then released his own versions of that testimony, often at variance with the subsequently revealed transcripts, and under circumstances in which the witness had little opportunity to correct or object to his version.

"(24) He has questioned adverse witnesses in public session in such a manner as to defame loyal and valuable public servants, whose own testimony he failed to get beforehand, and whom he never provided a comparable opportunity for answering the charges.

"(25) He has barred the press and general public from executive sessions and then permitted unauthorized persons whom his whim favored to attend, in one case, a class of schoolgirls, thus holding the very principle of executive sessions up to ridicule.

"(26) His conduct has caused and permitted his subcommittee to be incomplete or incapacitated in its normal work for approximately 40 per centum of the time that he has been its chairman. (During his nineteen months as chairman of the subcommittee, his refusal to recognize their rights—later acknowledged by him—caused the minority members to leave the subcommittee on July 10, 1953, and they did not return until January 25, 1954. His personally motivated quarrel with the United States Army necessitated the interruption of the subcommittee's work and its exclusive preoccupation with the Army-McCarthy hearings from April 22, 1954, to June 17, 1954.)

"(27) He has publicly threatened publications with the withdrawal of their second-class mailing privilege because he disagreed with their editorial policy. (Washington Post, Wall Street Journal, Time magazine.) Letter to Postmaster

General Summerfield made public August 22, 1953. See Washington Post, August 23, 1953.

"(28) He has exploited his committee chairmanship to disseminate fantastic and unverified claims for the obvious purpose of publicity. (McCarthy's hint that he was in secret communication with Lavrenti P. Beria and would produce him as a witness at a time when Beria was on the verge of execution in Moscow.) Washington News, September 21, 1953 (announcement of plan to subpoena Beria).

"(29) He has denied Members of Congress access to the files of the committee, to which every Member of Congress is entitled under the Reorganization Act (title II, sec. 202, par. (d)).

"(30) He has ridiculed his colleagues in the Senate, defaming them publicly in vulgar and base language (regarding Senator Hendrickson—'A living miracle without brains or guts'; On Flanders—'Senile—I think they should get a man with a net and take him to a good quiet place.').

"(31) He has announced investigations prematurely, subsequently dropping these investigations so that the question whether there was ever any serious intent to pursue them may be justifiably raised, along with the inevitable conclusion that publicity was the only purpose. (Central Intelligence Agency, Beria, and so forth.)

"(32) Checking through hearings, one will note that favorable material submitted by witnesses will usually have the notation 'May be found in the files of the subcommittee', whereas unfavorable material is printed in the record.

"(33) He has permitted changing of committee reports and records in such a way as to substantially change or delete vital meanings. (Senator Margaret Chase Smith felt compelled to object to the filing of his 1953 subcommittee reports without their first being sent through the full committee.)"

The CHAIRMAN. At this point we will read into the record the notice of this hearing:

"AUGUST 24, 1954.

"NOTICE OF HEARINGS

"Notice is hereby given to Hon. Joseph R. McCarthy, and all interested persons, that the select committee of the Senate of the United States, appointed pursuant to an order of the Senate agreed to on August 2, 1954 (legislative day, July 2, 1954), entered on Senate Resolution 301, a copy of which together with the resolution and amendments thereto is hereto attached, will meet in executive session on Monday, August 30, 1954, at 2 p. m., eastern daylight-saving time, and that the said committee will sit for the purposes of its appointment on Tuesday, August 31, 1954, at 10 a. m., eastern daylight-saving time, in the Senate caucus room, in the Senate Office Building, at Washington, D. C., and commence at said time and place its hearings to receive evidence, take testimony, and act as provided in said order, relating to the following matters, among others, committed to its jurisdiction:

"I. Incidents of contempt of the Senate or a senatorial committee, referred to in the following:

"A. Amendment proposed by Mr. Fulbright to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(3) Although repeatedly invited to testify by a committee of this Senate headed by the Senator from Iowa, the junior Senator from Wisconsin denounced the committee and contemptuously refused to comply with its request.

"B. Amendment proposed by Mr. Morse to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(a) Declined to comply with a request made by letter on November 21, 1952, by the chairman of the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration, that he appear before the subcommittee to supply information concerning certain specific matters involving his activities as a Member of the Senate.

"C. Amendment proposed by Mr. Flanders to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(17) He has continued to show his contempt for the Senate by failing to explain in any manner the six charges contained in the Hennings-Hayden-Hendrickson report, which was filed in January 1953. This involves his bank transactions, possible income-tax evasions, and the Lustron deal. The taint persists until he satisfactorily explains these matters, which he refused to do, although invited six times to appear during the 82d Congress.

"Copies of said amendments, and all other amendments hereinafter referred to, are attached to this notice.

"II. Incidents of encouragement of United States employees to violate the law and their oaths of office or Executive orders, referred to in the following:

"A. Amendment proposed by Mr. Fulbright to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(5) The junior Senator from Wisconsin openly, in a public manner before nationwide television, invited and urged employees of the Government of the United States to violate the law and their oaths of office.

"B. Amendment proposed by Mr. Morse to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(e) Openly invited and incited employees of the Government to violate the law and their oaths of office by urging them to make available information, including classified information, which in the opinion of the employees could be of assistance to the junior Senator from Wisconsin in conducting his investigations, even though the supplying of such information by the employees would be illegal and in violation of Presidential order and contrary to the constitutional rights of the Chief Executive under the separation-of-powers doctrine.

"C. Amendment proposed by Mr. Flanders to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(14) He has publicly incited Government employees to violate their security oaths and serve as his personal informants, thus tending to break down the orderly chain of command in the civil service, as well as violating the security provisions of the Government.

"III. Incidents involving receipt or use of confidential or classified document or other confidential information, from executive files, referred to in the following:

"A. Amendment proposed by Mr. Morse to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(d) Received and made use of confidential information unlawfully obtained from a document in executive files upon which document the Federal Bureau of Investigation had placed its highest classification; and offered such information to a lawfully constituted Senate subcommittee in the form of a spurious document which he falsely asserted to the subcommittee to be 'a letter from the FBI.'

"B. Amendment proposed by Mr. Flanders to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(13) He received and held a valuable classified document in possible violation of the Espionage Act. (Revealed in the Army-McCarthy hearings that he had improperly obtained J. Edgar Hoover's report on subversives from the Army and failed to restore the document to properly authorized hands.) He permitted the document to fall into the hands of a gossip columnist (Walter Winchell).

"IV. Incidents involving abuses of colleagues in the Senate, referred to in the following:

"A. Amendment proposed by Mr. Flanders to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(30) He has ridiculed his colleagues in the Senate, defaming them publicly in vulgar and base language (regarding Senator Hendrickson—'a living miracle without brains or guts'; on Flanders—'Senile—I think they should get a man with a net and take him to a good quiet place.').

"B. Amendment proposed by Mr. Morse to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(b) Unfairly accused his fellow Senators Gillette, Monroney, Hendrickson, Hayden, and Hennings of improper conduct in carrying out their duties as Senators.

"V. Incident relating to Ralph Zwicker, a general officer of the Army of the United States, referred to in the following:

"A. Amendment proposed by Mr. Fulbright to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(4) Without justification, the junior Senator from Wisconsin impugned the loyalty, patriotism, and character of Gen. Ralph Zwicker.

"B. Amendment proposed by Mr. Morse to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(c) As chairman of a committee resorted to abusive conduct in his interrogation of Gen. Ralph Zwicker, including a charge that General Zwicker was unfit to wear the uniform, during the appearance of General Zwicker as a witness before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations on February 18, 1954.

"C. Amendment proposed by Mr. Flanders to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz:

"(10) He has attacked, defamed, and besmirched military heroes of the United States, either as witnesses before his committee or under the cloak of immunity of the Senate floor (General Zwicker, General Marshall)."

"The select committee reserves the right to take thereafter such other testimony as it may deem advisable relating to any other matters referred to in said order of the Senate, resolution, and proposed amendments, or as may be developed at the hearings, and will make report to the Senate.

"All testimony and evidence received in the hearings shall be such as is found by the select committee to be competent, relevant, and material to the subject matters so under inquiry, with the right of examination and cross-examination, in general conformity to judicial proceedings and in accordance with said order of the Senate.

"The select committee will admit, subject to said order, as competent testimony for the record, so far as material and relevant, the official proceedings and pertinent actions of the Senate and of any of its committees or subcommittees, taking judicial notice thereof, and using official reprints when convenient. Following Senate tradition, witnesses may be examined by any member of the committee, and they may be examined or cross-examined for the committee by its counsel. Witnesses may be examined or cross-examined either by Senator McCarthy or his counsel, but not by both, as to the same witness.

"The said Hon. Joseph R. McCarthy is hereby formally requested by the said select committee of the Senate of the United States to appear at said hearing and hearings and adjournments and continu-

ances thereof, with legal counsel, if desired by him, to be examined, with the right to present evidence and testimony in accordance herewith and in accordance with the said order of the Senate.

"SELECT COMMITTEE TO STUDY CENSURE CHARGES

"PURSUANT TO SENATE ORDER ON SENATE RESOLUTION 301,

"ARTHUR V. WATKINS, *Chairman*."

At this point I note the presence of all members of the committee who are, of course, well known to the people who are assembled here, and the presence of the chief counsel and the assistant chief counsel to the committee.

I introduce Mr. E. Wallace Chadwick, chief counsel, former Member of the House of Representatives, and a leading and distinguished member of the bar of the State of Pennsylvania and of the Supreme Court of the United States.

Mr. Chadwick.

Mr. CHADWICK. Thank you.

The CHAIRMAN. And assistant counsel. Guy G. de Furia, also of Pennsylvania, Swarthmore, Pa., a distinguished member of the bar who has served as district attorney in his community and has been very active in the practice of law.

We have other members of the staff whom it will not be necessary at this time to introduce.

Now, at the outset of this hearing, the committee desires to state in general terms what is involved in Senate Resolution 301 and the Senate order on it, which authorized the appointment of the select committee to consider in behalf of the Senate the so-called Flanders resolution of censure, together with all amendments proposed to the resolution.

The committee, in the words of the Senate order, was—

authorized to hold hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate, to require by subpoena, or otherwise, the attendance of such witnesses and the production of such correspondence, books, papers, and documents, and to take such testimony as it deems advisable, and that the committee be instructed to act and make a report to this body prior to the adjournment sine die of the Senate in the 2d session of the 83d Congress.

That is a broad grant of power, carrying with it a heavy responsibility—a responsibility which the committee takes seriously. In beginning its duties, the committee found a few precedents to serve as a guide. It is true that there had been other censure resolutions before the Senate in the past, but the acts complained of were, for the most part, single occurrences which happened in the presence of the Senate or one of its committees. Under such circumstances, prolonged investigations and hearings were not necessary.

It should be pointed out that the some forty-odd alleged instances of misconduct on the part of Senator McCarthy referred to this committee are involved and complex, both with respect to matters of fact and law. With reference to the time element, the incidents are alleged to have happened within a period covering several years. In addition, 3 Senate committees already have held hearings on 1 or more phases of the alleged incidents of misconduct. Obviously, with all this in mind, the committee had good reason for concluding it faced an unprecedented situation which would require adoption of procedures, all within the authority granted it in the Senate order,

that would enable it to perform the duties assigned within the limited time given by the Senate.

The committee interprets its duties, functions, and responsibilities under the Senate order to be as follows:

1. To analyze the charges set forth in the amendments and to determine:

(a) If there were duplications which could be eliminated.

(b) If any of the charges were of such a nature that even if the allegations were established as factually true, yet there would be strong reasons for believing that they did not constitute a ground for censure.

2. To thoroughly investigate all charges not eliminated under No. 1 in order to secure relevant and material facts concerning them and the names of witnesses or records which can establish the facts at the hearings to be held.

In this connection the committee believes it should function as an impartial investigating agency to develop by direct contacts in the field and by direct examination of Senate records all relevant and material facts possible to secure.

When Senate Resolution 301 and amendments offered were referred to the committee, the committee interprets this action to mean that from that time on the resolution and charges became the sole responsibility of the Senate. To state it another way, the Senator, or Senators, who offered resolution 301, and proposed amendments thereto, have no legal responsibility from that point on for the conduct of the investigations and hearings authorized by the order of the Senate. The hearings are not to be adversary in character. Under this interpretation, it became the committee's duty then to get all the facts and material relevant to the charges irrespective of whether the facts sustained the charges or showed them to be without foundation.

The foregoing statement seems to be necessary in view of a widespread misunderstanding that the Senator who introduced the resolution of censure into the Senate and the Senators who offered amendments thereto, setting up specific charges against the Senator from Wisconsin, are the complaining witnesses, or the parties plaintiff, in this proceeding. That is not true, as has been explained. However, because of the fact that they had made some study of the situation, the committee did give them an opportunity to submit informational documentation of the charges they had offered. Also they were asked to submit the names of any witnesses who might have firsthand knowledge of the matters charged and who could give relevant and material testimony in the hearings.

Since matters of law also will be involved in reaching evaluation of the facts developed, pertinent rules of the Senate and sections of law, together with precedents and decisions by competent tribunals, should be briefed and made a part of the hearing record, the committee believes.

3. To hold hearings where the committee can present witnesses and documentary evidence for the purpose of placing on record, for later use by the Senate, the evidence and other information gathered during the preliminary investigation period, and for the development of additional evidence and information as the hearings proceed.

The resolution of censure presents to the Senate an issue with respect to the conduct and possible punishment of one of its Members.

The debate in the Senate preceding the vote to refer the matter to a select committee made it abundantly clear that the proceedings necessary to a proper disposal of the resolution and the amendments proposed, both in the Senate and in the select committee, would be judicial or quasijudicial in nature, and for that reason should be conducted in a judicial manner and atmosphere, so far as compatible with the investigative functions of the committee in its preliminary and continuing search for evidence and information bearing on all phases of the issues presented.

Inherent in the situation created by the resolution of censure and the charges made, is the right of the Senator against whom the charges were made to be present at the hearings held by the select committee. He should also be permitted to be represented by counsel and should have the right of cross-examination. This is somewhat contrary to the practice by Senate committees in the past, in hearings of this nature, but the present committee believes that the accused Senator should have these rights. He or his counsel, but not both, shall be permitted to make objections to the introduction of testimony, but the argument on the objections may be had or withheld at the discretion of the chairman. The Senator under charges should be permitted to present witnesses and documentary evidence in his behalf, but, of course, this should be done in compliance with the policy laid down by the committee in its notice of hearing, which is a part of this record.

In general, the committee wishes it understood that the regulations adopted are for the purpose of insuring a judicial hearing and a judicial atmosphere as befits the importance of the issues raised. For that reason, and in accordance with the order the committee believes to be the sentiment of the Senate, all activities which are not permitted in the Senate itself will not be permitted in this hearing.

4. When the hearings have closed, to prepare a report and submit it to the Senate. Under the order creating this committee, this must be done before the present Senate adjourns sine die.

By way of comment, let me say that the inquiry we are engaged in is of a special character which differentiates it from the usual legislative inquiry. It involves the internal affairs of the Senate itself in the exercise of a high constitutional function. It is by nature a judicial or semijudicial function, and we shall attempt to conduct it as such. The procedures outlined are not necessarily appropriate to congressional investigations and should not, therefore, be construed as in any sense intended as a model appropriate to such inquiries. We hope what we are doing will be found to conform to sound senatorial principles and traditions in the special field in which the committee is operating.

It has been said before, but it will do no harm to repeat, that the members of this committee did not seek this appointment. The qualifications laid down by the Senate order creating the committee said the committee should be made up of 3 Democrat Senators and 3 Republican Senators. This was the only condition named in the order. However, in a larger sense, the proper authorities of the Senate were charged with the responsibility of attempting to choose members of the Senate for this committee who could and would conduct a fair and impartial investigation and hearing. Members of the committee deemed their selection by the Senate authorities as a trust. We realize we are human. We know, and the American people know, that there

has been a controversy raging over the country through a number of years in connection with the activities of the Senator against whom the resolution is directed.

Members of this committee have been conscious of that controversy; they have seen, heard, and read of the activities, charges, and counter-charges, and, being human, they may have at times expressed their impressions with respect to events that were happening while they were happening. However, each of the Senators who make up this special select committee are mature men and with a wide background of experience which should enable them to disregard any impressions or preconceived notions they may have had in the past respecting the controversies which have been going on in public for many years.

We approach this matter as a duty imposed upon us and which we feel that we should do our very best to discharge in a proper manner. We realize the United States Senate, in a sense, is on trial, and we hope our conduct will be such as to maintain the American sense of fair play and the high traditions and dignity of the United States Senate under the authority given it by the Constitution.

Off the record.

(Discussion off the record.)

The CHAIRMAN. My attention has been called to an oversight, which, of course, I hardly need to say, that Senator McCarthy and his counsel, Mr. Williams, are also present. I apologize for the oversight.

Mr. WILLIAMS. Mr. Chairman, it seems that this may be an appropriate time for me to introduce my associate counsel who have not heretofore been introduced to the committee, Mr. Brent Bozell of the California bar, and Miss Agnes Neill of my office.

The CHAIRMAN. We are glad to have them present with us.

Mr. WILLIAMS. They sit immediately behind us.

The CHAIRMAN. This probably is an appropriate time to permit Senator McCarthy to make an opening statement. However, before he makes it, I want to call attention to the fact that this morning we were given two copies of this statement and we have attempted in the rather last-minute rush before coming in here, to go over it.

The condition was made that it should be relevant and material. It will not be, of course, a sworn statement. It is not testimony. It is customary ordinarily in court to permit a statement of this kind.

I want to say that we recognize that most of it is not material and relevant to the issues in this hearing as we understand them. However, we are not going to prevent Senator McCarthy from making that statement, and we will now permit him to proceed.

Senator McCARTHY. Thank you, Mr. Chairman.

The CHAIRMAN. And we want it understood that this is not a precedent to the reception of any matter in the way of testimony or evidence that is irrelevant, incompetent, and immaterial.

STATEMENT OF HON. JOSEPH R. McCARTHY, UNITED STATES SENATOR FROM WISCONSIN

Senator McCARTHY. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, I have requested several minutes at the beginning of these proceedings to make a statement. I am grateful for permission to do so. This is a serious matter to

me and, I think, to the country. It weighs heavily on me and I would like my own feelings known, in broad outline at least, before the committee begins to consider the evidence.

Several years ago, Mr. Chairman, I became convinced that this country and its institutions were in imminent peril of destruction by international communism. I learned from dedicated Americans, theretofore closer to the situation than I, that the threat was not just from the outside, but that the agents of the Soviet Union were firmly entrenched in our midst; and in particular that their success in infiltrating our Government had given the Soviet Union access to our most important secrets as well as a powerful and deadly voice in determining our foreign policies. I became convinced that subversives in the American Government had played a large role in the long and tragic train of defeats that this country and the free world have suffered at the hands of the Soviet Union since our entrance into the Second World War.

I was late, Mr. Chairman—we all were late, although I daresay some of us were earlier than others—in appreciating the immediacy and enormity of the danger. For it had been with us many, many years.

Once the weaknesses of our security system had been brought home to me, I conceived it my duty to expend every effort of mind and body to fight subversion, to help clean traitors and potential traitors out of the Government. I conceived this to be my first duty to my constituents and to my country. I still do, Mr. Chairman.

I have carried on my part in the fight as best I know how.

Let me say that I believe much progress has been made in the fight against subversion. Yet all the while, success has been in jeopardy; it is still in jeopardy.

As I see it, the fight has been obstructed—often successfully—by three groups: No. 1, by those against whom it is directed, the Communists and their sympathizers; No. 2, by those who do not sympathize with communism but who deny that it presents a serious threat; and No. 3, by those who profess to appreciate the strength of the Communist fifth column but who balk at taking vigorous measures to stamp it out.

These three groups, Mr. Chairman, so differently motivated, have rallied around a common standard. They have shaken hands on the proposition that vigorous anticommunism somehow represents a greater danger to America than communism itself.

If, after all is said and done, this unholy alliance should have its way, then I propose the premise that holds it together—that vigorous anticommunism is more dangerous than communism—as a fitting epitaph on the grave of American civilization.

May I repeat that, Mr. Chairman. I say if, after all is said and done, if this unholy alliance should have its way, then I propose that the premise that holds it together—namely, that vigorous anticommunism is more dangerous than communism—will be a fitting epitaph on the grave of American civilization.

It has been said that I am the cause of disunity in the country and in my party. There is disunity, and perhaps my activities have been a part of its cause. But I had always thought that it takes two sides who disagree to bring about disunity; and that either side, by ceasing to disagree with the other, can, of course, end the disunity.

Where there is disunity on matters of principle, then there ought to be disunity. Otherwise there is hypocrisy and betrayal of principle. I do not propose to be a hypocrite, and I will not betray principle. Nor do I urge this course on men who oppose me.

Furthermore, for my part, Mr. Chairman, I shall never attempt to bring about unity by trying, on specious grounds, to silence my opponents and destroy them, and thus cut off the debate. I believe that debate should continue on the merits of the questions that divide us, these questions being: Whether there is real danger from Communist subversion, and, if so, how to cope with it.

As I say, I believe that the fight of the American people against Communist infiltration, while it is far from finished, has achieved much success. I believe that the record shows that I have played some small part in that achievement. I cannot help but be proud of this.

But now it is urged that I be censured.

I would be untruthful if I agreed that my accusers were not affected by ulterior, political considerations. I believe that my accusers either entertain such motives themselves, or are unwitting victims of powerful pressure groups in the country who are best characterized as opponents of a vigorous fight against communism.

Be that as it may, this committee has its duty. I recognize that duty.

Four weeks ago I hoped that the Senate would consider and vote on the censure motion. The Senate decided instead to refer the charges to this committee. While I preferred a vote then and there, perhaps this procedure is best after all. I do hope, however, that each of the charges made against me on the Senate floor will be either considered by the committee, or declared by it unworthy of consideration.

May I repeat that, Mr. Chairman. I hope that each of the charges made against me on the Senate floor will be either considered by the committee, or declared by it unworthy of consideration.

A motion of censure, whatever motives prompt the making of it, is under the Constitution a legal matter. Consequently, I have retained counsel, Mr. Edward Bennett Williams and Mr. Brent Bozell, and I now put the case in their hands.

But I am here and I shall remain at the disposal of the committee to give it what assistance I can. I am hopeful that these matters will be disposed of as quickly as is consistent with a careful weighing of them. I have been kept from my job, Mr. Chairman, since last March, and I know I must get back to that job as soon as I possibly can.

The CHAIRMAN. Now we proceed to a consideration of the matters which the committee deemed of first importance in connection with these hearings. No. 1, "Incidents of contempt of the Senate or a senatorial committee."

I will ask our chief counsel, Mr. Chadwick, to read the specifications under that first category.

Mr. CHADWICK. Mr. Chairman, the matters of inquiry under the first item under schedule I, are "Incidents of contempt of the Senate or a senatorial committee," and reference is made therein to the amendment by Senator Fulbright, subparagraph (3), and quoting:

Although repeatedly invited to testify by a committee of this Senate headed by the Senator from Iowa, the junior Senator from Wisconsin denounced the committee and contemptuously refused to comply with its request.

B, the amendment of Senator Morse, subparagraph (a)—

declined to comply with a request made by letter on November 21, 1952, by the chairman of the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration, that he appear before the subcommittee to supply information concerning certain specific matters involving his activities as a Member of the Senate.

And three, the amendment of Senator Flanders, subparagraph (17), quoting:

He has continued to show his contempt for the Senate by failing to explain in any manner the six charges contained in the Hennings-Hayden-Hendrickson report, which was filed in January 1953. This involves his bank transactions, possible income-tax evasions, and the Lustron deal. The taint persists until he satisfactorily explains these matters, which he refused to do, although invited six times to appear, during the 82d Congress.

The CHAIRMAN. That concludes the specification with respect to this particular category, No. I, list of incidents.

Now, the Chair will state at this point that the committee understands that charge to refer to the actions of Senator McCarthy with respect to requests of the committee to appear before it. It does not construe it in any way as involving the truth or falsity of the matters which the committee, presided over by Senator Gillette, later by Senator Hennings or by Senator Hayden—I mean the subcommittee—it does not involve any of those charges, whether they were true or false.

The matter goes directly to the conduct of the Senator from Wisconsin with respect to the answer to the summonings and the requests of that committee to appear before it.

Mr. Williams?

Mr. WILLIAMS. Mr. Chairman, if I may, I should like to be heard by the committee at this time on a motion to dismiss that charge on the ground that it is legally insufficient on its face as a predicate for the censure of Senator McCarthy.

Now, I should like to predicate my motion upon two basic constitutional and legal principles, and call the precedents incident thereto to the attention of the Senate committee at this time.

I ask for leave to make this motion now because I have not had opportunity heretofore to make it. This is the first occasion upon which I could present this legal matter to the committee, and I shall do it with the utmost dispatch, if I am granted permission to make the motion at this time.

The CHAIRMAN. If you will state them briefly.

Mr. WILLIAMS. Mr. Chairman—

The CHAIRMAN. I will say in the beginning, Mr. Williams, that the committee had to pass on those matters earlier, and the reason they are presented here is because we have determined that question. However, we will hear from you.

Mr. WILLIAMS. I believe, sir, that there are overriding considerations of a constitutional level that are more important than any of the individuals or issues involved in this hearing, and I will try to be as brief as possible, sir, in the interests and economy of time in presenting our position on it, but I ask you to bear with me while I do call the attention of the committee to the outstanding precedents in this matter.

The CHAIRMAN. You may proceed with the oral statement. However, if you wish to file a brief on that matter, the committee would consider it that way, because it wants to move ahead with its testimony.

MR. WILLIAMS. I shall file a brief, too, Mr. Chairman, for the use of the committee, but the statement that I should like to make at this time is an oral statement on this subject.

The CHAIRMAN. You may proceed.

MR. WILLIAMS. Mr. Chairman and members of the committee, I believe that the charges contained in the first category and classification of charges as presented by this committee on August 24, 1954, for two clear reasons, fail to present a basis upon which a resolution of censure can be predicated in the Senate of the United States. One of these reasons, if the committee please, is an overriding constitutional reason, a reason that has been supported by the judicial and senatorial precedent since the beginning of our country, unbroken in tradition. It is a constitutional argument predicated upon the law, sirs, and I might say to you that Senator McCarthy, who is my client in these proceedings, has evidenced a desire to me not to pitch his defense on this predicate because he wants to meet this charge squarely on the merits, and we do intend to meet it squarely on the merits. But I have convinced him that I should be derelict in my duty as counsel before this committee if I did not call to the attention of this committee every precedent that has taken place on this subject since the beginning of the Senate, the first precedent going back to 1792.

And so I say, by way of recap, that our position is two-pronged, and I should like to address myself first to the proposition that this charge is insufficient on its face legally and precedentially, by virtue of the interpretation of the Constitution by the Senate of the United States, and then I should like to go to the very merits of the charge as evidenced by the charge itself, and I shall not depart from the record, because as a lawyer that I am confined to the record on a motion to dismiss at the outset of these hearings.

The fundamental proposition to which I should like to address myself first, and which I believe is of overriding and transcendental importance to this committee, is this: Never in the history of the Senate, never in the history of the United States judicial system, has there been a censure imposed upon a Member of Congress for conduct antedating the inception of the Congress which is hearing the censure charges. And this is for a very fundamental constitutional and legal reason.

The predicate for censure stems from article I, section 5 of the Constitution, which says that each House may punish its Members for disorderly behavior.

The purpose of that, as we read our constitutional history, was so that each Congress could preserve its legislative processes free from corruption and disorder. It was not to provide a basis for one Congress to review the conduct of an individual throughout some other Congress that antedated it and perhaps motivated, sometimes, by partisan and political considerations, impose upon him a censure. And this was considered from our earliest times.

Three times, gentlemen of this committee, three times the Supreme Court of the United States has said in unequivocal, clear, and unambiguous language, that the power of Congress to punish for contempt, which is the charge that we are considering here this morning, is a power that dies with the Congress wherein the contempt was allegedly committed.

It enunciated this basic proposition of law in the case of *Anderson v. Dunn* (6 Wheat. 204). It enunciated it again in *Jurney v. MacCracken* (294 U. S. 125); and it enunciated it a third time in *United States v. Bryan* (339 U. S. 323), so recently as within the last 5 or 6 years.

Not only have we had an unbroken line of judicial precedent upon this subject, but the Senate itself and the House of Representatives itself have from time to time carefully weighed and evaluated this proposition. And I feel that it would be helpful to this committee—and I conceive that to be at least half of my function in this case—I feel that it would be helpful to this committee if I made a very cursory rundown—and I promise to be brief—as brief as the exigencies of the circumstances permit—to call these precedents to the committee's attention.

The CHAIRMAN. We suggest that you do that in a brief.

This matter has been considered by the committee and it has had to do that in selecting the charges to be heard. And if you will submit that in a brief—we have precedents—we do not care to go into a long legal argument—if you make the argument we probably ought to have developed what we have in the legal setup—we have obtained that in our research—and when you get through with that probably the whole day would be consumed—that can all be taken care of in a brief that can be submitted by you in giving us the precedents.

Our counsel and others have also run down the precedents. We do not agree with you. And that is obvious or we would not have the charges before us at this time.

Mr. WILLIAMS. I think that is all the more reason—

The CHAIRMAN. You can submit your brief—we will permit you to submit a brief on that point.

Mr. WILLIAMS. May I say this, Mr. Chairman, when you say to me, sir, that the committee does not agree with me it demonstrates to me all the more reason for permitting me to make an oral argument on this subject, because if the committee has a predeliction and predisposition on this legal matter as we begin the hearings, then certainly I should be afforded as counsel for Senator McCarthy at least a hearing on these propositions of law.

The CHAIRMAN. You are not being denied that hearing—you can file your briefs and that will be considered by the committee.

We necessarily in this board of inquiry, which is not exactly a court trial—it is in the nature of a judicial proceeding—had to make some preliminary determinations or we could not move forward at all.

You can submit that brief and we will reserve the question, but we would like to go on with the proceedings, if permitted. You can state the general grounds of your objection, and I think that any court would permit you to do that, but I think any court would also require you, if it deemed it necessary, to submit a brief on that point.

Mr. WILLIAMS. Mr. Chairman, I shall abide, of course, by your decision this morning and throughout this hearing so long as I am counsel, but I would like to say to you, sir, that I feel that this is the heart of our defense. On this first charge, I do intend to submit written argument, but I should like to ask the committee, if I may have just one half hour to present our views on this matter which I regard as the heart of our defense. And I understood as I entered this case that it was to be judicial in nature. I understood from my reading of

the precedents that a proceeding of this kind is judicial in nature and that all of the rights that adhere to any accused in any tribunal are to adhere to the Senator who is before you today.

And I must, at the risk of being derelict in my duty, ask once again for the right to present orally this position which I believe to be so important, and which I believe cannot adequately be presented in a written brief.

The CHAIRMAN. You are not being denied any of your rights. I think the Chair is acquainted with court procedure and rights that may be permitted. And I know when counsel can submit briefs, when the court is in doubt or wishes to have the matter further heard.

We are willing to consider the matter at length when you have filed your briefs, but we have made the ruling and we will now proceed with the testimony.

Now, Mr. Chadwick, have you checked the Senate records with reference to the charges, the specifications under incident listed as No. 1?

Mr. CHADWICK. I have, sir.

The CHAIRMAN. Did you make an investigation appertaining to all of the documents that may have a bearing on that matter?

Mr. CHADWICK. I understood that it was a part of my duties to find not only matters which might be affirmative in support of the resolution, but also any matter which might be in fairness reflected in these hearings for the benefit of Senator McCarthy, and I did my best.

The CHAIRMAN. You may read what you have obtained there and mention each exhibit as you go along.

The Chair is acquainted with this material—has studied it somewhat—so that the Chair can anticipate what is going to be presented.

Mr. CHADWICK. Mr. Chairman, I call your attention and ask you to take judicial notice or legislative notice, for those who are more particular in the use of words, with respect to proceedings in the Senate on August 6, 1951, being Senate Resolution No. 187, introduced by Senator Benton to investigate Senator McCarthy.

The record will show that the President of the Senate referred Resolution No. 187, introduced by Senator Benton, to the Senate Committee on Rules and Administration. And with your permission I will now read the substance of Senate Resolution No. 187.

The CHAIRMAN. You may proceed.

Mr. CHADWICK. From the printed copy, Senate Resolution No. 187, I will omit the technical matter at the beginning and commence with the word:

RESOLUTION

Whereas the Subcommittee on Privileges and Elections of the Committee on Rules and Administration has made a unanimous report to such committee with respect to the 1950 Maryland senatorial general election; and

Whereas such report contains findings with respect to the financing of the campaign of Senator John Marshall Butler as follows:

"1. As a result of the investigation and hearings of this subcommittee, Jon M. Jonkel, the campaign manager of Senator Butler, has been indicted, pled guilty to, and has been sentenced for violation of the Maryland election laws for failure to properly report contributions and expenditures in the Butler campaign.

"2. Not only were substantial sums of contributions and expenditures not properly reported to Maryland authorities as required by law, but also a proper accounting was not made to the Secretary of the Senate as required by the Federal Corrupt Practices Act"; and

Whereas such report, with respect to the literature used in the campaign of Senator John Marshall Butler, contains findings as follows:

"1. * * *

"The tabloid From the Record contains misleading half-truths, misrepresentations, and false innuendoes that maliciously and without foundation attack the loyalty and patriotism not only of former Senator Millard Tydings, who won the Distinguished Service Cross for battlefield heroism in World War I, but also the entire membership of the Senate Armed Services Committee in 1950.

"2. Its preparation, publication, and distribution were the result of a combination of forces, including Senator Butler's own campaign organization.

"3. The tabloid, disregarding simple decency and common honesty, was designed to create and exploit doubts about the loyalty of former Senator Tydings.

"4. It could never have been the intention of the framers of the first amendment to the Constitution to allow, under the guise of freedom of the press, the publication of any portrayal, whether in picture form or otherwise, of the character of the composite picture as it appeared in the tabloid From the Record. It was a shocking abuse of the spirit and intent of the first amendment to the Constitution.

"5. The tabloid From the Record was neither published nor in fact paid for by the Young Democrats for Butler. Their alleged sponsorship for this publication was nothing more than a false front organization for the publication of the tabloid by the Butler campaign headquarters and outsiders associated with it. In the judgment of the subcommittee, this is a violation of the Federal and State laws requiring persons responsible for such publications to list the organizations and its officers"; and

Whereas such subcommittee report contains findings with respect to the participation of Senator Joseph R. McCarthy in such campaign as follows:

"3. Senator Joseph R. McCarthy, of Wisconsin, was actively interested in the campaign to the extent of making his staff available for work on research, pictures, composition, printing of the tabloid From the Record. Members of his staff acted as couriers of funds between Washington and the Butler campaign headquarters in Baltimore. Evidence showed that some of the belatedly reported campaign funds were delivered through his office. His staff also was instrumental in materially assisting in the addressing, mailing, and planning of the picture-postcard phase of the campaign"; and

Whereas such subcommittee unanimously included in its specific conclusions and recommendation to the committee the following:

"5. The question of unseating a Senator for acts committed in a senatorial election should not be limited to the candidates in such elections. Any sitting Senator, regardless of whether he is a candidate in the election himself, should be subject to expulsion by action of the Senate, if it finds such Senator engaged in practices and behavior that make him, in the opinion of the Senate, unfit to hold the position of United States Senator" Now, therefore, be it

Resolved, That the Committee on Rules and Administration of the Senate is authorized and directed to proceed with such consideration of the report of its Subcommittee on Privileges and Elections with respect to the 1950 Maryland senatorial general election, which was made pursuant to Senate Resolution 250, 81st Congress, April 13, 1950, and to make such further investigation with respect to the participation of Senator Joseph R. McCarthy in the 1950 senatorial campaign of Senator John Marshall Butler, and such investigation with respect to his other acts since his election to the Senate, as may be appropriate to enable such committee to determine whether or not it should initiate action with a view toward the expulsion from the United States Senate of the said Senator Joseph R. McCarthy.

The CHAIRMAN. I may say that the reading of the resolution was not related as to whether it was either true or false, I mean with respect to the charges, but merely to show that the resolution had been introduced in the Senate of the United States, and that it was before a certain committee.

Now, you have the record with respect to the resolution?

Mr. CHADWICK. I have the record of the legislative history of the resolution, sir.

Report of the Subcommittee on Privileges and Elections to the Committee on Rules and Administration, pursuant to Senate Resolution 187 and Senate Resolution 304, page 1.

The resolution was referred by the President of the Senate to the Senate Committee on Rules and Administration and, in turn, to its Subcommittee on Privileges and Elections for proper action.

The CHAIRMAN. You may proceed with the record.

Mr. CHADWICK. Mr. Chairman, further support of the matters cognizable under the first paragraph—I request your leave, and I have been directed, to read into the record from the exhibits in the report of the Subcommittee on Privileges and Elections to the Committee on Rules and Administration with respect to Senate Resolution 187 and Senate Resolution 304.

I will proceed to do so.

The CHAIRMAN. What are you going to read?

Mr. CHADWICK. Read the letters, sir, from the report of the committee.

The CHAIRMAN. Letters between whom?

Mr. CHADWICK. Well, the first one will be a letter from Senator Guy M. Gillette to Hon. Joseph R. McCarthy.

The CHAIRMAN. You may proceed.

Mr. WILLIAMS. In the economy of time. Mr. Chairman, Senator McCarthy is perfectly willing to stipulate to the authenticity of these letters, instead of taking the time of this committee to read them.

Mr. CHADWICK. It is not a question of authenticity.

The CHAIRMAN. We want them read into the record, sir. We will accept a stipulation with respect to the authenticity, but it is the purpose of the committee to have them placed in the record by the reading of them.

Mr. WILLIAMS. I am thinking of the economy of time. They could be copied by the reporter.

The CHAIRMAN. If it takes too much time in the course of these proceedings, we will think of economy measures, but at the moment, we do not think we need to do so.

Mr. CHADWICK. I desire to explain for the purposes of the record that these letters will be read, including their exhibit number in the report from which they are drafted, for the purpose of convenient reference in the future.

I shall read the date, the address, the body of each letter which I read, and the name of the author of the letter, which was signed thereby.

The first is exhibit No. 3, which happens to commence on page 61 of the report in question. It is a letter dated September 25, 1951. It is addressed to Hon. Joseph R. McCarthy, United States Senate, and it is signed by Senator Guy M. Gillette.

It reads as follows—

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. Was this date prior to the resignation of Senator Gillette as chairman? Was he chairman at the time he wrote this letter?

The CHAIRMAN. The record, I think, shows that he was.

Mr. WILLIAMS. We will so stipulate.

The CHAIRMAN. He was chairman of the Subcommittee on Privileges and Elections, which is a subcommittee of the Committee on Rules and Administration of the United States Senate.

The record will also show and we will take judicial notice of that fact, as we are of all these other matters, that it was referred to a subcommittee—that is, under Resolution 187.

You may proceed.

Mr. CHADWICK (reading):

MY DEAR JOE: I promised to tell you the decision of the Subcommittee on Privileges and Elections as to procedure as soon as they had made the decision. They are going to take up the Benton resolution at 9:30 a. m., Friday, September 28, in room 457. At that time they are going to hear Senator Benton's statement. They voted to hear the Senator in executive session but also voted that you could be present if you so desired and if time permitted, to make a statement at this same meeting. It was also decided that there should be no cross-examination except by the members of the subcommittee.

A further decision was made that if additional evidence is taken, it will be governed by rules of procedure determined after this first meeting.

With personal greetings, I am,

Sincerely,

GUY M. GILLETTE.

There are the identifying initials "GMG:dd."

Exhibit No. 4, a letter dated October 1, 1951, from Senator Gillette to Senator McCarthy, addressed as follows:

HON. JOSEPH R. MCCARTHY,

United States Senator, Washington, D. C.

MY DEAR SENATOR: On last Friday, September 28, Senator Benton appeared before the Subcommittee on Privileges and Elections and presented a statement in support of his resolution looking to action pertaining to your expulsion from the Senate. You had been advised that you could attend this meeting which was a public one, but without the right of cross-examination of Senator Benton. The subcommittee recessed to reassemble on call of the chairman. The chairman announced at the close of the meeting that an opportunity would be accorded Senator McCarthy to appear and make any statement he wished to make concerning the matter and with the right of Senator Benton to be present, but without any right on the part of Senator Benton to cross-examine you in any way. This is to notify you that this action was taken and the subcommittee will be glad to hear you at an hour mutually convenient. It is hoped that if you desire to appear and make any statement in connection with this matter, that a time can be fixed before the 10th of October. I should be glad to have your comment relative to a convenient time for you if you desire to come before us. If you do not so desire I shall appreciate it if you will advise us of that fact.

With personal greetings, I am,

Sincerely,

GUY M. GILLETTE.

Mr. CHADWICK. Next is exhibit No. 5, which is identified, the third of these exhibits, in the text of that exhibit as a "copy" in brackets, and it quotes "A." which is not too clear to me, but it is on the paper, and dated October 4, 1951. It is a letter to the Honorable Guy M. Gillette, from Senator McCarthy, and it reads as follows:

DEAR GUY: This is to acknowledge receipt of your letter of October 1 in which you offer me an opportunity to appear before your committee and answer Senator Benton's charges.

Frankly, Guy, I have not and do not intend to even read, much less answer, Benton's smear attack. I am sure you realize that the Benton type of material can be found in the Daily Worker almost any day of the week and will continue to flow from the mouths and pens of the camp followers as long as I continue my fight against Communists in Government.

With kindest personal regards, I am,

Sincerely yours,

JOE MCCARTHY.

It is identified by the initials "McC:ct."

The next exhibit is exhibit No. 6, also designated as "copy" and it quotes the letter "B." It is dated December 6, 1951. It is a letter from Senator McCarthy to Senator Guy Gillette, addressed to him as chairman of the Elections Subcommittee of the United States Senate, Washington, D. C., and reads as follows:

DEAR MR. CHAIRMAN: AS you of course know, your Elections Subcommittee has the power and the duty to carefully investigate any valid claims of irregularity or dishonest in the conduct of campaigns for the United States Senate.

As you and all the members of your subcommittee know or should know, the Elections Subcommittee, unless given further power by the Senate, is restricted to matters having to do with elections. The Senate could, of course, by a majority vote give your subcommittee power to conduct an unlimited investigation of any Senator. Such power was not asked for nor given to your Elections Subcommittee.

However, over the past months, it has been repeatedly brought to my attention that a horde of investigators hired by your committee at a cost of tens of thousands of dollars of taxpayers' money, has been engaged exclusively in trying to dig up on McCarthy material covering periods of time long before he was even old enough to be a candidate for the Senate—material which can have no conceivable connection with his election or any other election. This is being done in complete disregard of the limited power of your Elections Subcommittee. The obvious purpose is to dig up campaign material for the Democratic Party for the coming campaign against McCarthy.

When your Elections Subcommittee, without Senate authorization, spends tens of thousands of taxpayers' dollars for the sole purpose of digging up campaign material against McCarthy, then the committee is guilty of stealing just as clearly as though the members engaged in picking the pockets of the taxpayers and turning the loot over to the Democratic National Committee.

If one of the administration lackeys were chairman of this committee, I would not waste the time or energy to write and point out the committee's complete dishonesty, but from you, Guy, the Senate and the country expect honest adherence to the rules of the Senate.

If your committee wanted to dig up campaign material against McCarthy at the expense of the taxpayers, you were in all honesty bound to first get the power to do so from the Senate, which the Senate had a right to give and might have given. But your committee did not risk asking for such power. Instead, your committee decided to spend tens of thousands of dollars of taxpayers' money to aid Benton in his smear attack upon McCarthy.

Does this mean, that if a Benton asks your committee to do so, you will put an unlimited number of investigators at unlimited cost investigating the background of the other 95 Senators so their opponents can use this material next election? Or is this a rule which applies only to him who fights Communists in Government? Let's get an answer to this, Guy. The people of America are entitled to your answer.

While the actions of Benton and some of the committee members do not surprise me, I cannot understand your being willing to label Guy Gillette as a man who will head a committee which is stealing from the pockets of the American taxpayer tens of thousands of dollars and then using this money to protect the Democratic Party from the political effect of the exposure of Communists in Government. To take it upon yourself to hire a horde of investigators and spend tens of thousands of dollars without any authorization to do so from the Senate is labeling your Elections Subcommittee even more dishonest than was the Tydings committee.

The chairman suggests that one of the other copies, which is a photographic transition of the letters from the report, Mr. Williams, would be easier to read only because the book is hard to turn.

MR. WILLIAMS. The easier course I am still willing to stipulate to, Mr. Chadwick, that we can regard all of this as in the record right now, and I will so stipulate.

MR. CHADWICK. I recall your stipulation.

THE CHAIRMAN. I understand that, and the committee desires to have this read into the record.

I mentioned the matter of time before. This is important, and there is enough time to take on the matters that we need to do now.

When I referred to the matter of time with reference to your offer to argue the legal questions, I expected to give you time to do that in a brief that we could sit down and consider, but this committee is not so set up that we can determine all these legal questions.

The questions that are referred to the committee we gather evidence on. The Senate may decide we are dead wrong, and it may decide we are right. They are the final arbiter. We are only an agent of the Senate to gather the evidence in matters of law and all that sort of thing, and we prefer to have the legal arguments, except barely the statement of the grounds, legal arguments with reference to the precedents and all that sort of thing, in detail put before us in briefs. We consider it much better that way. That is the reason I made the ruling I did before.

Senator ERVIN. Mr. Chairman, could I make one statement commending the chairman for his ruling? My father was a trial lawyer in North Carolina for 65 years. I entered his law office 32 years ago, and when I did he gave me this advice—he said:

Salt down the facts. The law will keep.

And I understand that was the effect of the chairman's ruling—that we should get the facts first and then pass on legal questions when the facts are in.

The CHAIRMAN. You state it far better than I could.

Mr. WILLIAMS. I am certainly willing to abide by that, provided I do get an opportunity to orally argue these propositions, because I feel that is the heart of our defense, and I further feel that it is absolutely necessary, in the light of the Chair's statement, that there is some predisposition on the part of the committee on this matter of law.

The CHAIRMAN. May I say this: In order to get before the Senate material on these various charges, it is necessary to have evidence produced, and we can have the legal arguments produced, but we are not the final arbiters.

We are merely the agents of the Senate to gather together this information and to use such rules and regulations as we can in screening out and trying to keep the investigation on the track.

If we were the final arbiter, or if we were a court, that would be another matter. Then you would be entitled probably to present in more detail your arguments as you go along.

However, most courts recognize the facts that they will take the statement of the grounds and allow the matter to be presented more in detail in briefs, particularly if there is any doubt on it, and I think in this case you should present those arguments in a brief, because the Senate should have before it the arguments pro and con.

But it isn't necessary for us to sit and listen to that as a matter of law, because you have stated now the general situation.

I overruled your motion, so we will proceed now to take the evidence.

In any event, we ought to get this evidence because the Senate later on may decide that we are right or it may decide you are right, but if they decide we are right, and we struck the testimony and didn't take any of it, then there would be nothing before the Senate to work on, so we want that information.

Mr. WILLIAMS. Mr. Chairman, I am sure that you will understand if I most respectfully continue throughout this hearing to insist on my right to be heard on these propositions.

The CHAIRMAN. That is right, and you will understand we have an obligation here to perform, and that is to rule, and to rule properly.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. And to state the rulings, and if we are wrong we will consider these matters in committee, and if the other members of the committee believe the chairman is wrong, the chairman is willing to be corrected, and we will indicate clearly where we think we have made an error during the course of the hearing.

Mr. WILLIAMS. Yes, sir.

Mr. CHADWICK. Mr. Chairman, my associate calls my attention to the fact that in reading exhibit 6, which I have just completed, I mentioned the date as December 6, 1954. If that is true, I desire to correct that. The correct date is December 6, 1951.

Exhibit 7 is a letter from Senator Gillette to Senator McCarthy, dated December 6, 1951, and there is noted in the head in brackets, the word "copy."

Senator JOSEPH R. MCCARTHY,
United States Senate, Washington, D. C.

MY DEAR SENATOR: Your letter dated December 6 and referring to the work of the Senate Subcommittee on Privileges and Elections in the discharge of its duties relative to Resolution No. 187 has just been received by messenger. This resolution, on its introduction by Senator Benton, was referred by the Senate to the Committee on Rules and Administration, of which you are a member. This committee, in its turn, referred the resolution to its Subcommittee on Privileges and Elections, of which I am the chairman.

Our subcommittee certainly did not seek or welcome the unpleasant task of studying and reporting on a resolution involving charges looking to the ouster of one of our colleagues from the Senate. However, our duty was clear in the task assigned to us and we shall discharge that duty in a spirit of utmost fairness to all concerned and to the Senate. We have ordered our staff to study and report to us on both the legal and factual phases of the resolution. On receiving these reports the subcommittee will then determine its course in the light of its responsibilities and authority.

Your information as to the use of a large staff and the expenditure of a large sum of money in investigations relative to the resolution is, of course, erroneous. May I also assure you that no individuals or groups outside of the subcommittee membership have had or will have any influence whatever in the work assigned to us to do.

With personal greetings, I am
Sincerely,

GUY M. GILLETTE.

Identified by the initials "GMG : cc."

The next exhibit is exhibit No. 8, also marked in parentheses, "copy," and the letter "C." It is a letter dated December 7, 1951, by Senator McCarthy to Senator Gillette, and addressed to him as chairman of the Subcommittee on Elections of the United States Senate, Washington, D. C.:

DEAR SENATOR GILLETTE: I would very much appreciate receiving the following information:

(1) The number of people employed by the Elections Subcommittee, together with information on their employment background, the salaries they receive, and the length of time they have been employed.

(2) The names of the above individuals who have been working on the investigation of Senator McCarthy.

(3) Whether they have been instructed to restrict their investigation to matters concerning elections.

(4) If the investigators have been ordered to cover matters other than either my election or any other election in which I took part, then—

the printed word is "than"—

the theory of the law under which you feel an election subcommittee is entitled to hire investigators to go into matters other than those concerned with elections.

I am sure that you will agree that I am entitled to this information.

Signed, "Joe McCarthy," and with the words, "Sincerely yours."

The next exhibit is exhibit 9, also containing the word "copy" in brackets. It is a letter dated December 11, 1951, from Senator Guy M. Gillette to the Honorable Joseph R. McCarthy, addressed to the United States Senate, Washington, D. C.:

MY DEAR SENATOR: I received your letter dated December 7 in which you make inquiry and request for certain specific information.

As you are a member of the Rules Committee, I feel, as you suggested, that you are entitled to the information relative to the personnel employed by the Subcommittee on Privileges and Elections. Your first request is as to the number of people employed by the Elections Subcommittee, their salaries, and the length of time they have been employed. The following is the list employed by the subcommittee—

The following is tabulated. It is tabulated under "Employed," "Position," "Separated (3)," "Basic salary per annum."

This completes the list of employees of the subcommittee. Three other employees of the Rules Committee have been performing work for the subcommittee, including Mr. John P. Moore, the chief counsel. You will note that 3 of the 6 employees of the subcommittee were taken on in a temporary capacity after the middle of October and completed their assigned work within a few weeks time. These men have done some work in connection with the Ohio senatorial hearing.

You make further inquiry as to what theory of the law the subcommittee holds in connection with its investigatory work. We are not working under any "theory." All the powers that we have derived from delegated responsibilities assigned to us by the Senate Committee on Rules and Administration. We do not have, and could not have, any power other than so derived as a subagency of the standing Committee on Rules and Administration—

with identifying initials.

The next exhibit is a letter dated December 19, 1951, exhibit No. 10, and is a letter which bears at the head the word "Copy" in brackets, and the letter "D." It is a letter signed by Senator McCarthy addressed to Senator Guy Gillette, chairman of the Subcommittee on Elections of the United States Senate, Washington, D. C.:

DEAR SENATOR GILLETTE: On December 7, I wrote you as follows:

(1) The number of people employed by the Elections Subcommittee, together with information on their employment background, the salaries they receive, and the length of time they have been employed.

Parenthetically. I should state that apparently—strike that out, Mr. Reporter. The accuracy will turn up later.

(2) The names of the above individuals who have been working on the investigation of Senator McCarthy.

(3) Whether they have been instructed to restrict their investigation to matters concerning elections.

(4) If the investigators have been ordered to cover matters other than either my election or any other election in which I took part, then the theory of the law under which you feel an Elections Subcommittee is entitled to hire investigators to go into matters other than those concerned with elections.

I am sure you will agree that I am entitled to this information.

That is with reference to a letter which has already been read into the record. The letter proceeds:

On December 11 you wrote giving me the names of those employed by the subcommittee, stating that two others, whom you did not name, were also doing work for the subcommittee. You did not give me the employment background of the investigators as I requested. Why, Senator, do you refuse to give me the employment background of those individuals?

You also failed to tell me whether the investigators have been instructed to extend their investigation beyond matters having to do with elections.

You state that the only power which your subcommittee has was derived from the full committee. The full committee appointed you chairman of an Elections Subcommittee, but gave you no power whatsoever to hire investigators and spend vast amounts of money to make investigations having nothing to do with elections. Again may I have an answer to my questions as to why you feel you are entitled to spend the taxpayers' money to do the work of the Democratic National Committee.

As I have previously stated, you and every member of your subcommittee who is responsible for spending vast amounts of money to hire investigators, pay their traveling expenses, etc., on matters not concerned with elections, is just as dishonest as though he or she picked the pockets of the taxpayers and turned the loot over to the Democratic National Committee.

I wonder if I might have a frank, honest answer to all the questions covered in my letter of December 7. Certainly as a member of the Rules Committee and as a member of the Senate, I am entitled to this information. Your failure to give this information highlights the fact that your subcommittee is not concerned with investigating elections, but concerned with dishonestly spending the taxpayers' money and using your subcommittee as an arm of the Democratic National Committee.

Sincerely yours,

[S] JOE MCCARTHY.

and the letter carries the initials at the bottom.

The next exhibit is exhibit No. 11, also indicated as "Copy" in brackets. It is a letter dated December 21, 1951. It is addressed to Senator McCarthy, and signed by Guy M. Gillette, and reads as follows:

SENATOR JOSEPH R. MCCARTHY,

United States Senate, Washington, D. C.

MY DEAR SENATOR: Today I received your letter of December 19 quoting former correspondence in which you had asked for some specific information which you feel was not given you in my reply to your former request.

Not only as a member of the Rules Committee, but as a member of the United States Senate, you were certainly entitled to any factual information relative to the work of our Subcommittee of Rules and Administration or with reference to the members of its staff. I shall be very glad to give you such information as I have or go with you, if you so desire, to the rooms occupied by the subcommittee and aid you in securing any facts that are there available, relative to the employees of the subcommittee or their work.

I am sure you will agree that this is preferable to an attempt to cover matters of this kind through an interchange of correspondence. Unfortunately, our previous correspondence concerning these matters found its way into the public press and your letters to me were printed in full in the public press even before I received them. As a former judge you will appreciate, I am sure, the impropriety of discussing matters pertaining to pending litigation in the public press. The Senate Committee on Rules and Administration, having referred the Benton resolution to our subcommittee, has placed us in a quasijudicial position relative to a matter of outstanding importance involving the expulsion from the Senate of a sitting member.

Inquiry has disclosed that it would be impossible for me to call the subcommittee together for further consideration of this resolution and its import before Monday, the 7th of January, and I am calling a meeting for that date at 10 a. m. in my office.

When the Benton resolution was first referred to the subcommittee it developed that there was a difference of opinion among the members as to our responsibility under the reference and the terms of the resolution. The subcommittee ordered

its staff to make study and report of the legal phases and precedents pertaining to the questions raised by the resolution and also to report as to certain allegations of fact contained in the resolution. We are awaiting these reports and, on the date of the meeting, which I have called for January 7, it is expected that the subcommittee will make a decision as to what further action, if any, it will take on the resolution.

As I have told you before, if you care to appear before the subcommittee, we should be glad to make the necessary arrangements as to time and place. Your letter and this reply will be made available to the members of the subcommittee by copy and you will be promptly advised as to what action the subcommittee decided to take.

In the meantime, as I have stated above in this letter, I shall be glad to confer with you personally as to matters concerning our staff and its work.

In closing, may I again assure you that as far as I am personally concerned, neither the Democratic National Committee, nor any other person or group other than an agency of the United States Senate has had or will have any influence whatever as to my duties and actions as a member of the subcommittee and I am just as confident that no other member of the subcommittee has been or will be so influenced.

With warm personal greetings and holiday wishes, I am

Sincerely,

GUY M. GILLETTE.

And the initials at the bottom "GMG: cc."

Exhibit No. 12 is a letter from Senator McCarthy to Senator Guy M. Gillette dated January 4, 1952:

Senator GUY M. GILLETTE.

*Chairman, Subcommittee on Elections and Privileges,
United States Senate, Washington, D. C.*

DEAR SENATOR GILLETTE: Your letter of December 21 has just been called to my attention. As you know this was in answer to my letter to you of December 19, in which I asked for certain information.

I can easily understand that you might have some difficulty answering some of my questions without first consulting the other members of the subcommittee—for example, the question as to the theory of the law under which investigators are being hired and money being spent to investigate matters having nothing whatsoever to do with elections. There is, however, one simple question which you could easily answer and I am sure you will agree that I am entitled to the answer. It is the simple question of whether or not you have ordered the investigators to restrict their investigation to matters having to do with elections, or whether their investigations extend into fields having nothing whatsoever to do with either my election or the election of any other Senator.

Sincerely yours,

(Signed) JOE MCCARTHY.

McC: jh

The next letter is marked "Exhibit No. 12A," contains the word "copy" at the top, the date January 10, 1952. It is addressed to Senator Joe McCarthy and is signed by Senator Guy M. Gillette:

MY DEAR SENATOR: This is an acknowledgment of the receipt of your letter of January 4 which has just been brought to my attention. Your letter makes inquiry as to whether the Subcommittee on Privileges and Elections "ordered the investigators to restrict their investigations to matters having to do with elections, or whether their investigations extend into fields having nothing whatever to do with either my election or the election of any other Senator."

In reply, you will recall that the Senate Committee on Rules and Administration received from the Senate the Benton resolution calling for a preliminary investigation relative to ouster proceedings. The Rules Committee referred the resolution to our subcommittee, as any other piece of legislation would be referred to a subcommittee. The subcommittee met and directed its staff to make a preliminary study both of the legal phases and precedents pertaining to this type of action and also a preliminary investigation of the factual matter charged in the resolution. They were instructed to make these preliminary studies and report to us at as early a time as possible. The report on the legal questions has been received by the subcommittee and we advise that the report on the factual charges will be available to us by the end of this week. The

subcommittee then would study the reports and determine what action, if any, they wish to take in making their report to the Rules Committee on the resolution.

The above statement covers the question you asked as to what instructions were given to the subcommittee staff relative to the Benton resolution.

Sincerely,

GUY M. GILLETTE.

GMG:cc

The next letter is marked "Exhibit 13," with the word "copy" bracketed, and is a letter dated March 21, 1952, addressed to the Honorable Carl Hayden, United States Senate, Washington, D. C., and is signed by Senator McCarthy.

It is as follows:

DEAR SENATOR HAYDEN: Some days ago you handed me a letter from Senator Gillette, chairman of the Senate Elections Subcommittee, to you as chairman of the full committee. At that time you informed me that a majority of the full committee had adopted the subcommittee's resolution requesting that I bring to the floor of the Senate a motion to discharge the Elections Subcommittee. You further stated that the purpose of this motion would be to test the jurisdiction and integrity of the members of the subcommittee.

As I stated to you the other day, I feel it would be entirely improper to discharge the Elections Subcommittee at this time for the following reasons:

The Elections Subcommittee unquestionably has the power and, when complaint is made, the duty to investigate any improper conduct on the part of McCarthy or any other Senator in a senatorial election.

The subcommittee has spent tens of thousands of dollars and nearly a year making the most painstaking investigation of my part in the Maryland election, as well as my campaigns in Wisconsin. The subcommittee's task is not finished until it reports to the Senate the result of that investigation, namely, whether they found such misconduct on the part of McCarthy in either his own campaigns or in the Tydings campaign to warrant his expulsion from the Senate.

I note the subcommittee's request that the integrity of the subcommittee be passed upon. As you know, the sole question of the integrity of the subcommittee concerned its right to spend vast sums of money investigating the life of McCarthy from birth to date without any authority to do so from the Senate. However, the vote on that question cannot affect the McCarthy investigation, in that the committee for a year has been looking into every possible phase of McCarthy's life, including an investigation of those who contributed to my unsuccessful 1944 campaign.

As you know, I wrote Senator Gillette, chairman of the subcommittee, that I considered this a completely dishonest handling of taxpayers' money. I felt that the Elections Subcommittee had no authority to go into matters other than elections unless the Senate instructed it to do so. However, it is obvious that insofar as McCarthy is concerned that is now a moot question, because the staff has already painstakingly and diligently investigated every nook and cranny of my life from birth to date. Every possible lead on McCarthy was investigated. Nothing that could be investigated was left uninvestigated. The staff's scurrilous report, which consisted of cleverly twisted and distorted facts, was then "leaked" to the leftwing elements of the press and blazoned across the Nation in an attempt to further smear McCarthy.

A vote of confidence in the subcommittee would be a vote on whether or not it had the right, without authority from the Senate, but merely on the request of one Senator (in the case, Senator Benton) to make a thorough and complete investigation of the entire life of another Senator. A vote to uphold the subcommittee would mean that the Senate accepts and approves this precedent and makes it binding on the Election Subcommittee in the future.

A vote against the subcommittee could not undo what the subcommittee has done in regard to McCarthy. It would not force the subcommittee members to repay into the Treasury the funds spent on this investigation of McCarthy. A vote against the subcommittee would merely mean that the Senate disapproves what has already been done insofar as McCarthy is concerned, and therefore, disapproves an investigation of other Senators like the one which was made of McCarthy. While I felt the subcommittee exceeded its authority, now that it has established a precedent in McCarthy's case, the same rule should apply to every other Senator. If the subcommittee brought up this question before the

investigation had been made, I would have voted to discharge it. Now that the deed is done, however, the same rule should apply to the other 95 Senators.

For that reason, I would be forced to vigorously oppose a motion to discharge the Elections Subcommittee at this time.

I hope the Senate agrees with me that it would be highly improper to discharge the Gillette-Monroney subcommittee at this time, thereby, in effect, setting a different rule for the subcommittee to follow in case an investigation is asked of any of the other 95 Senators.

Sincerely yours,

JOE MCCARTHY.

At the bottom, initials, and "cc: To all Senators."

Mr. Chairman, may I turn over the responsibility of reading to my able associate to my right, and let me rest my voice for a minute?

The CHAIRMAN. Mr. De Furia will now read the exhibits, beginning with exhibit No. 14.

Mr. DE FURIA. We will read into the record Senate Resolution 300 of the 82d Congress, 2d session:

IN THE SENATE OF THE UNITED STATES,
April 8 (legislative day, April 2), 1952.

Mr. Hayden (for himself, Mr. Gillette, Mr. Monroney, Mr. Hennings, and Mr. Hendrickson) submitted the following resolution, which was ordered to lie over under the rule:

"RESOLUTION

"Whereas Senate Resolution 187, to further investigate the participation of Senator Joseph R. McCarthy in the Maryland 1950 senatorial campaign and other acts, to determine whether expulsion proceedings should be instituted against him, was introduced in the Senate by the Senator from Connecticut (Mr. Benton) on August 6, 1951, and was referred by the Senate to the Committee on Rules and Administration; and

"Whereas on August 8, 1951, said resolution was referred by the Committee on Rules and Administration to its Subcommittee on Privileges and Elections; and

"Whereas in a series of communications addressed to the chairman of said subcommittee during the period between December 6, 1951, and January 4, 1952, the Senator from Wisconsin (Mr. McCarthy) charged that the subcommittee lacked jurisdiction to investigate such acts of the Senator from Wisconsin (Mr. McCarthy) as were not connected with election campaigns and attacked the honesty of the members of the subcommittee, charging that, in their investigation of such other acts, the members were improperly motivated and were 'guilty of stealing just as clearly as though the members engaged in picking the pockets of the taxpayers'; and

"Whereas on March 5, 1952, the Subcommittee on Privileges and Elections adopted the following motion as the most expeditious parliamentary method of obtaining an affirmation by the Senate of its jurisdiction in this matter and a vote on the honesty of its members:

"That the chairman of the Committee on Rules and Administration request Senator McCarthy, of Wisconsin, to raise the question of the jurisdiction of the Subcommittee on Privileges and Elections and of the integrity of the members thereof in connection with its consideration of Senate Resolution 187 by making a formal motion on the floor of the Senate to discharge the committee; and that Senator McCarthy be advised by the chairman of the Committee on Rules and Administration that, if he does not take the requested action in a period of time to be fixed by stipulation between Senator McCarthy and the chairman of the Committee on Rules and Administration, the committee (acting through the chairman of the standing committee or the chairman of the subcommittee) will itself present such motion to discharge for the purpose of affirming the jurisdiction of the subcommittee and the integrity of its members in its consideration of the aforesaid resolution;" and

"Whereas on March 6, 1952, the said motion was also adopted by the Committee on Rules and Administration and the chairman of said committee submitted to the Senator from Wisconsin (Mr. McCarthy) a copy of the above-stated motion; and

"Whereas by letter dated March 21, 1952, the Senator from Wisconsin (Mr. McCarthy) in effect declined to take the action called for by the above-stated motion, repeating his charge that the subcommittee has been guilty of 'a completely dishonest handling of taxpayers' money,' referring to a preliminary and confidential report of its staff as 'scurrilous' and consisting of 'cleverly twisted and distorted facts':

Now, therefore, to determine the proper jurisdiction of the Committee on Rules and Administration and to express the confidence of the Senate in its committee in their consideration of Senate Resolution 187, it being understood that the following motion is made solely for this test and that the adoption of the resolution is opposed by the members on whose behalf it is submitted, be it

Resolved, That the Committee on Rules and Administration be, and it hereby is, discharged from the further consideration of Senate Resolution 187.

The CHAIRMAN. Mr. de Furia, will you state for the record, of which we will take judicial notice, as to what happened to this resolution?

Mr. DE FURIA. Yes, sir.

We ask that the committee take legislative notice of the fact that the Senate voted upon this resolution on April 10, 1952; that the proceedings appear in the Congressional Record of that day, page 3954. The votes were: Yeas, 0; nays, 60; not voting, 36, and the President of the Senate declared that the resolution was rejected, sir.

The CHAIRMAN. You may proceed to the next exhibit.

Mr. DE FURIA. Exhibit No. 17 is a letter dated May 7, 1952, from Senator Gillette to Senator McCarthy:

HON. JOSEPH R. MCCARTHY,

United States Senate, Washington, D. C.

MY DEAR SENATOR: The Subcommittee on Privileges and Elections in executive session this morning voted to hold public hearings on Senate Resolution 187, which was introduced in the Senate by Senator William Benton, of Connecticut, on August 6, 1951, and was thereafter referred to this subcommittee for action.

It was further decided that the hearings are to begin on Monday, May 12, and that the first charges to be heard will be Senator Benton's "Case No. 2," wherein it was alleged that you had improperly received a fee of \$10,000 in 1948 from the Lustron Corp. for an article on housing which was included in an advertising booklet published by that company.

The subcommittee has not yet determined the order of witnesses for this first case but we expect to do so by Friday after consultation with the staff.

In the meantime I do wish to extend to you the opportunity to appear at the hearings for the purpose of presenting testimony relating to this charge. The hearings in this case will probably continue for several days, and we shall make whatever arrangements for your appearance are most convenient for you.

Sincerely,

GUY M. GILLETTE, *Chairman.*

The next letter, Mr. Chairman, Exhibit No. 18, is a letter dated May 8, 1952, from Senator McCarthy to Senator Gillette and reads as follows:

UNITED STATES SENATE,
COMMITTEE ON APPROPRIATIONS,

May 8, 1952.

SENATOR GUY GILLETTE,

*Chairman, Subcommittee on Privileges and Elections,
United States Senate, Washington, D. C.*

DEAR SENATOR GILLETTE: This is to acknowledge receipt of your letter of May 7, in which you state that your Subcommittee on Privileges and Elections plans to hold public hearings on Benton's "Charge No. 2" against me, namely, that it was improper for me to sell the rights of my housing book to the Lustron Corp.

You invite me to testify.

On what point do you desire information?

The following facts are all public information in regard to the sale of my book:

I held a press conference in 1948 when the sale was completed and announced:

- (1) The sale of the housing book;
- (2) That Lustron was the buyer;
- (3) That Lustron would be the publisher;
- (4) That the book would be sold for 35 cents per copy;
- (5) That the contract provided that I would keep the book up to date for 5 years, revising it whenever required by any changes in legislation, lending practices, or other matters affecting housing;
- (6) That I had been working on the book for over a year and that every line had been checked for accuracy by every Government agency concerned with housing.

At that time Lustron had been loaned money by the RFC, but was apparently flourishing and producing an excellent prefabricated house.

During the housing hearings which were held throughout the country, I found that a vast number of young men were not even remotely aware of how to take advantage of the many housing aids which we had provided for them by law. I felt that writing a simple explanatory book so that every young man who desired to buy or build a home could easily understand how to take advantage of the aids which we had provided for him by law was even more important than passing the proper laws. I proceeded to do this task.

Lustron offered a royalty of 10 cents per copy and promised the widest circulation of any of those who were bidding on the book. The Congressional Record of June 19, 1950, contains the correspondence which I had with a great number of publishers whom I attempted to interest in putting out this book at a low retail cost. This correspondence starts on page A-4764. The publishers' replies boiled down to the statement that they could not afford to publish such a specialized book at a low cost.

In 1950, after RFC had foreclosed on Lustron, Senator Fulbright's committee made a thorough investigation of Lustron. Senator Fulbright, who by the greatest stretch of the imagination could not be considered a friend of mine, was unable to produce any evidence that McCarthy ever directly or indirectly interceded with any Government agency in behalf of Lustron. The unquestioned evidence before that committee was that "Senator McCarthy has never been interested in Lustron, has never interceded for Lustron, has never done anything to influence any particular thing for Lustron"—page 200, Senate Banking and Currency Committee, June 26, 1950. The evidence also shows—page 200—that Lustron received \$46,000 for the sale of this book with an advertising pamphlet. Apparently the purchase and sale of this book was Lustron's only profitable venture.

I understand that even though your investigators have been very painstaking in their attempts, they have been unable to find even a telephone call I made to anyone in behalf of Lustron. If the administration knew of a single contact which I ever made with RFC or any other Government agency in behalf of Lustron, they would hardly be keeping it secret to protect McCarthy. I am curious to know what new facts you expect to produce for the benefit of the public at this public hearing.

Perhaps you are going to produce evidence to show that the day the contract was signed, November 12, 1948, 10 days after the Republicans lost control of the Senate and the House and were defeated in the Presidential race, Lustron bought this book from me because of the tremendous influence which I have with the Democrat administration. Or perhaps you hope to prove that the preparation of the book and the contract to keep it up to date for 5 years was worth less than 10 cents a copy. If so, I wonder if you plan on proving that some of the speeches which a sizable number of your Democrat friends make and magazine articles and books which they have written for a fee are worth less than the fee paid.

The announcement that you are holding public hearings after nearly a year of investigation carries the implication that there is some improper conduct in connection with the sale of the publication to Lustron. I would like to know what you claim that improper conduct to be. I assume you do not claim it is improper for a Senator to write a book or magazine article, because if so, you will have to call many of your Democrat friends before you.

If the "improper conduct" is the sale by a Senator of a book or a magazine article to an apparently flourishing corporation which has an RFC loan, no hearing of any kind would be necessary, because there can be no dispute about the fact that the book was sold to Lustron and that Lustron did have an RFC

loan. Therefore, I assume that I am not unreasonable in asking you what new facts or proof you expect to produce at the public hearings. Certainly, you would not be using the hearing merely as a sounding board for more of the Benton type of smear attacks.

In this connection I call your attention to the fact that Benton, who has made the complaint, has been selling his publication and films directly to the State Department. Do you plan upon investigating this matter? Or, like Benton, do you consider it proper for a Senator to take money directly from a Government agency but improper to deal with a private firm which has a loan from a Government agency?

As chairman of the committee investigating Benton's charges, I am sure you are aware that Political Affairs, the official Communist Party publication which sets forth the current tasks and problems of the party, has ordered Communist Party members to "support the Benton resolution to oust McCarthy from the Senate" (Political Affairs, October 1951, p. 29). This publication has been labeled by the House Committee on Un-American Activities as the theoretical organ of the Communist Party.

Shortly before Benton appointed himself to lead the fight to smear and discredit McCarthy, the Communist Party through its then secretary, Gus Hall (who has since been jailed) officially proclaimed that all Communist Party members must "yield second place to none in the fight to rid our country of the fascist poison of McCarthyism" (Daily Worker, May 4, 1950).

The Communist Party has officially proclaimed and published in the Daily Worker that one of its major tasks is to discredit and smear McCarthy out of public office.

The Communist Party of Washington and Maryland put out a directive to all members of the Communist Party under the heading, "Unity Can Defeat McCarthyism." This directive was signed by Philip Frankfeld (who has since been jailed). It contains the following order to Communist Party members: "Remember the fact that the main enemy is McCarthyism and all of its workings and direct your main fight against it."

All of the above objectives of the Communist Party have been adopted by William Benton as his objectives also. You must agree that the aims and objectives of both the Communist Party and Benton are identical insofar as McCarthy is concerned. The only question is whether it is knowingly or through stupidity that Benton is trying to perform what the Communist Party has officially and repeatedly proclaimed its No. 1 task.

Lenin once said, "We can and must write in a language which sows among the masses hate, revulsion, scorn, and the like toward those who disagree with us."

I am sure that you would never knowingly allow your committee to serve the Communist cause. However, the damage done is the same regardless of whether it is knowingly and deliberately done. There can be no question in your mind or in anyone's mind that this year-long investigation by your subcommittee would never have been commenced if I had not been exposing Communists in Government. Already 10 of those whom I have exposed have either been convicted or removed under the loyalty program. This is only a small indication of how badly the Communist Party is being hurt. The Communists will have scored a great victory if they can convince every other Senator or Congressman that if he attempts to expose undercover Communists, he will be subjected to the same type of intense smear, even to the extent of using a Senate committee for the purpose. They will have frightened away from this fight a vast number of legislators who fear the political effect of being inundated by the Communist Party line sewage.

If you have evidence of wrongdoing on McCarthy's part, which would justify removal from the Senate or a vote of censure by the Senate, certainly you have the obligation to produce it. However, as you well know, every member of your committee and staff privately admits that no such evidence is in existence. It is an evil and dishonest thing for the subcommittee to allow itself to be used for an evil purpose. Certainly the fact that the Democrat Party may temporarily benefit thereby is insufficient justification. Remember the Communist Party will benefit infinitely more.

Sincerely yours,

JOE MCCARTHY.

Exhibit No. 19 is a letter from Senator McCarthy to Senator Gillette, dated May 8, 1952, and I will read it, Mr. Chairman:

Senator GUY M. GILLETTE,
*Chairman, Subcommittee on Privileges and Elections,
 United States Senate, Washington, D. C.*

DEAR SENATOR GILLETTE: I understand that your subcommittee has decided to commence holding open hearings Monday on Benton's resolution to expel McCarthy from the Senate because of his fight to expose Communists in the Democrat administration. I further understand that you have taken no action whatsoever on the resolution to investigate Benton.

Before I urged the Senate to vote to continue the life of your subcommittee we received your unqualified promise to proceed to investigate the Benton case just as expeditiously as the attempted expulsion of McCarthy. I now understand that you have not even so much as suggested that the resolution asking for an investigation of Benton's activities be referred to your subcommittee; that nothing whatsoever has been done in the Benton case, although weeks have passed since that resolution was introduced, and you made that promise on the Senate floor. I understand you excuse your actions to the press by stating that the Rules Committee had not referred the Benton case to you.

You and Benton are members of the Rules Committee, and, as you well know, the Democrats have the majority of the votes on that committee and can stall the Benton case indefinitely without referring it to your subcommittee. I am sure you will agree that this is a most dishonest evasion of a promise made to and relied upon by the Senate.

In view of the amount of time and money spent investigating McCarthy, this stalling in the Benton case cannot help but more firmly convince the American people that your subcommittee is being dishonestly used as an arm of the Democrat National Committee.

Sincerely yours,

JOE MCCARTHY.

The CHAIRMAN. At this point, the committee will recess until——
 Senator JOHNSON. Mr. Chairman——

The CHAIRMAN. Just a moment. Senator Johnson.

Senator JOHNSON. In just a minute, I desire to make a very brief statement.

The CHAIRMAN. Order, please. Photographers, please keep your cameras quiet and do not use them. Sit down and be quiet until we recess.

Senator JOHNSON. Mr. Chairman, on yesterday evening Senator McCarthy and his attorney, Mr. Williams, called the attention of this committee to a published article in the Denver Post on March 12, 1954, in which an interview by telephone with me was stated or was used, and I desire to make a brief statement with respect to that publication.

The CHAIRMAN. You may proceed, Senator.

Senator JOHNSON. Mr. Chairman, I did not say on March 12, or at any other time, that I personally loathed Senator Joseph McCarthy. In response to a telephone call from Denver, I agreed that some of my Democratic colleagues did not like Senator McCarthy. My March 12 statement, as published, did not say that I personally loathed Senator McCarthy. The Flanders speech on the Senate floor, which was the forerunner of my March 12 statement, pertained to the question whether or not Senator McCarthy be removed from the chairmanship of a Senate committee.

My position then and now is that that matter should be decided by the majority party in charge of the organization of the Senate and that it was not the business of the Senate Democratic Party at all. I have full faith in my ability to weigh the charges which have been

made against Senator McCarthy, together with whatever evidence may be presented without prejudice.

The CHAIRMAN. Thank you, Senator.

Senator STENNIS. Mr. Chairman, may I—

The CHAIRMAN. Senator Stennis.

Senator STENNIS. Mr. Chairman, I want to say that I think the ruling of the Chair was correct, a while ago, with reference to the oral argument by Mr. Williams.

I think the request of the Chair that he file a written brief would be very helpful in this case to the members of the committee and to the Members of the Senate.

Ordinarily, in a court of law, the declaration or the bill of complaint sets out the facts, and we have the facts before us; but in this case, there is no formal bill of complaint, no formal declaration, so I think it is necessary to first get the facts. It is said that out of the facts the sound law arises.

Now, after all these facts are in and the brief submitted—and I have made a note here of the three cases cited from the Supreme Court—it might be that some might want to hear oral argument on those cases.

I would like to reserve that point now, because I want to go into it in the brief.

But, first, I think the Chair is eminently correct. We must develop these facts.

Mr. WILLIAMS. I might say to the Chair that overnight I shall prepare a brief, and I shall submit it in form so that each member of the committee shall have a copy of it, in an effort to comport with the Chair's ruling.

I shall also hope that the Chair, in its wisdom, will see fit, after consultation with the other members, to permit me a specified amount of time to make such additional points as I wish.

I would like also to say at this time, if I may, sir, that the record might be straight in open hearings, I think it should be stated at this time that at no time has either Senator McCarthy or myself challenged Senator Johnson's qualifications to sit on this committee.

What we did was to call to the attention of the committee a matter that was called to our attention exactly 5 minutes before we brought it to the committee. I felt that as counsel to Senator McCarthy, and as counsel serving before this committee, I should be derelict in my duty if I did not bring to the attention of the committee something upon which the committee might want to take action.

Now, I do not know whether the Chair desires to have read into the record what I called to the attention of the committee or not. It seems to me it would be appropriate to have it there so that Senator Johnson's remarks might be viewed in proper context.

What I did call—

The CHAIRMAN. I do not think it is necessary to this hearing. Nobody has challenged Senator Johnson. He was appointed by the Senate, and this committee has no authority to remove him or even to accept a resignation of his from the committee.

Since that is the record, why is it necessary to clutter it up with a lot of extraneous matter? I rule that we will not follow that suggestion.

Mr. WILLIAMS. The only thing we had hoped for, Mr. Chairman, was this: At least—maybe I am in error—but I was led to believe as I

left the executive session last night—I do not know whether Senator McCarthy shares my understanding or not—but I was led to believe that Senator Johnson was going to call the editor who bylined this story, and either confirm or deny the reported contents thereof.

The CHAIRMAN. If it is immaterial to this hearing, what difference does it make whether he called him or did not call him? I do not think it makes any difference whatsoever. We are not trying Senator Johnson; no accusations have been made against him, no challenge has been made as to him.

Senator McCARTHY. Mr. Chairman, I have desisted from making any comments, so far, and I would like to ask a question, if I may.

The CHAIRMAN. Just a moment, Senator. Let us get this clear: I think the fair interpretation of the rule is that when your counsel speaks on a matter, that precludes you from addressing the Chair of the committee on the same matter. If you want to take it over yourself, why then, you start it, and then we will let you finish it. But we are not going to permit both of you to argue this matter.

Senator McCARTHY. Just a minute, Mr. Chairman, just 1 minute.

Mr. WILLIAMS. Senator McCarthy is really extending a thought that I had, and that I had suggested to the Chair.

I had come away from the hearing yesterday, feeling that we were going to get a statement from Senator Johnson either affirming or denying the story which is reported in the March 12 Denver Post. Now, I was not idly curious on that subject, Senator. I felt that I needed that information in order to intelligently advise Senator McCarthy as to what position he should take with respect to this matter.

The CHAIRMAN. I would say to you, Mr. Williams, that Senator Johnson, if he was able to make that telephone communication, will tell you privately what was the result of the conversation. But I cannot see why it has anything to do with this matter. There is no challenge. We have not any authority over Senator Johnson.

Mr. WILLIAMS. I do not have information enough at this time, Mr. Chairman, to make a challenge. I do not know whether I should advise Senator McCarthy to make a challenge or not, because I do not know yet whether or not the reported statements in the Denver Post are true or are untrue, and I have relied upon the representations made in executive session as to the source for my information on that subject today.

The CHAIRMAN. I would say that the Chair has already ruled on this matter that it has nothing to do with the committee. We have no authority to change the personnel. We could not—it is not material to our investigation.

The personnel have been selected; members of this committee have been selected by the Senate itself, and this committee certainly has no authority under the order set up under the Resolution 301 to remove any of its members, to consider any challenge to its membership.

Mr. WILLIAMS. So that I might understand the ruling of the Chair, it is that we are not entitled to the information as to the truth or falsity of the statements of March 12?

The CHAIRMAN. I say you are entitled to it if you wish to get it from Senator Johnson, but I say that it is not material to this hearing and for that reason I am not going to permit, or should not permit colloquy to go on back and forth.

Senator Johnson has made his statement, and that is it, and you have made your statement.

Senator CASE. Mr. Chairman——

The CHAIRMAN. Senator Case.

Senator CASE. It occurs to me that all of this discussion is immaterial to the purposes of the inquiry, for the record of this inquiry.

Senator CARLSON. Mr. Chairman, I would like to be in a position——

The CHAIRMAN. Senator Carlson.

Senator CARLSON. I confirm Senator Case's remarks, so far as this particular record is concerned.

Senator McCARTHY. Mr. Chairman, I would like to ask one question. Are we entitled to know whether or not the quotations of March 12 are correct or incorrect?

I would like to know whether the Denver Post——

The CHAIRMAN. You may get it, Senator, and I am going to rule on this, and I have already ruled, you may get that some other place. But this committee has no jurisdiction over those matters, whatsoever. This committee was appointed by the Senate; the only condition laid down was that there would be 3 Democrats and 3 Republicans, and here we are, 3 Republicans and 3 Democrats, and this committee is not going to take on the job of the Senate and going to decide whether this committee is a proper committee or not. This committee is——

Senator McCARTHY. Mr. Chairman——

The CHAIRMAN. Just a moment, Senator. You have filed no challenge; and, in the first place, I believe it is improper for you to do so, because we have not any jurisdiction.

Senator McCARTHY. Mr. Chairman, I should be entitled to know whether or not——

The CHAIRMAN. The Senator is out of order.

Senator McCARTHY. Can't I get Mr. Johnson to tell me——

The CHAIRMAN. The Senator is out of order.

Senator McCARTHY. Whether it is true or false?

The CHAIRMAN. The Senator is out of order. You can go to the Senator and question and find out. That is not for this committee to consider. We are not going to be interrupted by these diversions and sidelines. We are going straight down the line.

The committee will be in recess.

I had announced previously that the committee would recess until 10 o'clock tomorrow morning, and that is the order.

(Whereupon, at 12:25 p. m., the committee adjourned to reconvene Wednesday, September 1, 1954, at 10 a. m.)

HEARINGS ON SENATE RESOLUTION 301

WEDNESDAY, SEPTEMBER 1, 1954

UNITED STATES SENATE,
SELECT COMMITTEE TO STUDY CENSURE CHARGES
PURSUANT TO SENATE ORDER ON SENATE RESOLUTION 301,
Washington, D. C.

The select committee met, pursuant to notice, at 10:10 a. m., in the caucus room, Senate Office Building, Senator Arthur V. Watkins (chairman) presiding.

Present: Senators Watkins (presiding), Johnson of Colorado (vice chairman), Stennis, Carlson, Case, and Ervin.

Also present: Senator McCarthy; E. Wallace Chadwick, counsel to the committee; Guy G. de Furia, assistant counsel to the committee; John M. Jex, clerk of the committee; John W. Wellman, staff member; Frank Ginsburg and Ray R. McGuire, members of Senator Watkins' staff on loan to the committee; and Edward Bennett Williams, counsel to Senator McCarthy, with his associates, Agnes A. Neill and Brent Bozell.

The CHAIRMAN. It is with extreme regret and deep sorrow that we received today the news of the death of Senator Maybank, the distinguished Senator from South Carolina. He was greatly beloved in the Senate. He had been there for a long time, had splendid seniority. We are going to miss him.

His State lost a great man, and the Nation a fine public servant.

By reason of the fact that this hearing had already been set up it would be very inconvenient to postpone it, and the committee felt that it should proceed with the hearings as scheduled. However, at least two members of the committee will be appointed to attend the funeral when the date is announced.

As a mark of respect the committee will all stand, and we would like you to stand with us for one moment in silence, as a mark of respect to Senator Maybank.

(The committee and the audience stood in silence.)

The CHAIRMAN. You may be seated.

I would like to ask at the outset of this hearing today, are the microphones and the amplification system working sufficiently well so that you can hear in the rear of the room?

(The response was "Yes.")

The CHAIRMAN. The officers at the end of the room indicated that they are working. We did not know until the latter part of the hearing yesterday that they were not working. We regret that very much.

At the close of yesterday's session a question had been raised, which the Chair ruled on, and, in amplification of what was said then, I think, for the benefit of the people of the country, I should at least expand the statement and the ruling that I made.

The question was raised with respect to the qualifications of Senator Johnson of Colorado to sit as a member of this committee. The ruling was that he was appointed by the Senate itself; this committee had no power to remove him; and there had been no challenge filed against him; and even if there had been, this committee was powerless to act in the matter.

In addition to that, I would like to call attention to the fact that the committee has heard from Senator Johnson—his statement that was made yesterday in open session. The committee is satisfied that Senator Johnson can do exactly what he said he could do, that is, to try this matter fairly and consider the evidence that is brought before it.

The Constitution of this country provided for a House and a Senate, our supreme legislative bodies.

In doing that the framers of the Constitution said this in section 5 of article 1:

Each House shall be the judge of the elections, returns, and qualifications of its own Members and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day.

Some parts of the section are not apropos of what I am going to say, so I will not read them.

The following paragraph states:

Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member.

The foregoing language has been construed to give to each House of Congress the power to discipline its own Members and to determine the rules of its proceedings. It has in the past rejected Members who have come with credentials from a State and have done so for various reasons which seemed to be sufficient to the Senate.

It has, as I recall, expelled Members.

It has also passed resolutions of censure.

It is the only body that can discipline a Member for matters that occur in the Senate, or of his activities, and can take notice of what a Senator is doing. Courts cannot do it—no one else can do it but the Senate.

The Senate has to act as a body in the final stages of any proceeding or series of proceedings which have to do with the discipline or the punishment of any of its Members for misconduct.

No matter what position a Senator may have taken with respect to any of these matters of expulsion, rejection or discipline, he is entitled to vote on that matter. No one can disqualify him. Even if all the Senators had taken a strong position, saying with reference to Senator X—let us make it impersonal—if all of them said that Senator X was a disgrace to the Senate, that he had done things which were improper, and he ought to be disciplined, Senator X could not successfully challenge any one of those Senators from sitting and acting on his case. If he could, if he could disqualify him for that reason, then there would be no action by the Senate, because all of them except the Senator himself would be disqualified.

Suppose the Senate was divided evenly on a matter involving Senator X. Then those who had taken a strong position for Senator X, if we are going to invoke a rule of complete impartiality and complete neutrality, all of those who were strongly for him would be

disqualified, and all of those who had spoken against him would be disqualified, and again the Senate would be impotent, completely powerless to do the thing the Constitution says that it should do.

Now, a committee is only an arm, an agency of the parent body, the Senate. None of the six Senators sitting here on this committee can make any final judgment in the proceedings of this committee on the matter now before it.

I pointed out, I hoped in a clear way yesterday, that this committee had taken a position that, in accordance with the order which was issued that it was to take such testimony as it deems advisable, that it had concluded that that meant that it was to receive, ferret out, and search for all evidence that has anything to do with or is relevant and material to the charges now before this committee and the Senate, not to eject any parties aside on the matter, but to ferret it all out.

It is a fact-finding body. In order to accomplish that, we have to do a lot of preliminary work. We have staff people, investigators. They go out and search for evidence, because if they did not, the Senate would have to do it somewhere along the line, and that is the only way the Senate can act.

Ninety-six Senators could not sit in a body and do that, as a practical matter, not within the time limit in the resolution, I am sure. So they have delegated this committee to take this testimony, to get it, and it is our purpose, as was announced, to get the testimony whether it favors Senator McCarthy or whether it is against him or whether it is just in between, as long as it is relevant and material.

Now, that being the situation, and particularly with respect to the fact that we cannot make any final judgment, I cannot see how any legal contention of any shape or form can be made against any member of this committee that could be maintained as a matter of law or as a matter of fact.

Men in the profession of law are trained to take an objective point of view. They sympathize with the man they defend in court, who may be charged with some vicious crime, and yet a lawyer would go all out, although he may have horrors of the crime, and he will do his level best to see that that man has his rights.

You have three members of this committee who are lawyers and who have served as judges.

Now, that is our purpose. And the other members of this committee are all men of experience. In fact, I did not know until some time back that some of the others were not lawyers. They have had enough experience here to know how these matters are handled.

The public at large, many of them, at least, do not seem to understand that we do not render any final decision. We do not find the accused innocent or guilty. We get the facts and try to get them all; we get the arguments on the law and try to get them all, and have them briefed for us, and then we report to the Senate of the United States, which is the final court, and I submit that any man who cannot be disqualified from sitting on that court certainly cannot be disqualified from sitting on the committee that merely searches for the evidence.

I want to make that clear. I do not know if any member of the committee has any desire to make comment on it. I shall be glad to hear from them if they do.

Apparently, no comment is to be made.

I think I might say without the denial or any fear of contradiction that the committee is unanimous on this matter.

In addition to what I have said—I should say this—the Senate created the committee, appointed us, and we can find nowhere in our appointment, our source of authority, the directive of what we are to do, any place where we should pass on the qualifications of the committee. That was done by a higher body, and it would be presumptuous on our part to attempt to do any such thing.

Senator ERVIN. Mr. Chairman.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. You have invited a comment. I would like to say that I approve 100 percent what you have said. It is apparent that if the right of a Senator to discharge a senatorial function can be successfully challenged, then the ability of the Senate to function under the Constitution of the United States would be paralyzed in many cases.

The CHAIRMAN. Then the committee has made the ruling. We think the matter is not pertinent or relevant to this case, so we will go ahead with the testimony and call upon our counsel to read the minutes.

Mr. WILLIAMS. Mr. Chairman.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. So that our legal position in this matter might be preserved, overnight I have prepared a memorandum stating our position I think simply and clearly, and I should like to ask the Chair that this memorandum be incorporated in the record of these proceedings so that it will be there present for the Senate to consider at the appropriate time.

The CHAIRMAN. Do you want the entire letter just as you wrote it put in the record?

Mr. WILLIAMS. I am interested in having the memorandum in the record, sir.

The CHAIRMAN. Personally, I have no objection to that. I think the whole matter has been immaterial and irrelevant to these proceedings. I think we should proceed to carry out the directive given us by the Senate.

At this moment I think, since this involves the whole committee and one member of the committee specifically, that I shall reserve the ruling until a later moment, until I can confer with my colleagues.

Mr. WILLIAMS. Mr. Chairman, I want to make it perfectly clear, sir, that I am not seeking opportunity to argue this matter orally. All I want is to have our position preserved in the record so that these proceedings will completely be recorded therein. I just want our position preserved in the record by an inclusion of this memorandum.

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. I had an opportunity to read the statement very briefly just before coming to the meeting. It seems to me that the position of the counsel might be preserved without necessarily putting that statement in the record.

The statement as I read it makes certain statements of fact which may or may not be provable. I don't know; they may be, but it

seems to me before we agree to insert the statement in the record, that it should be examined and studied with that thought in mind.

The position of counsel that they wish to preserve the right is already spoken for the record, and I see no objection to that, but it seems to me that the statement which incorporates allegations that, if true, should perhaps be submitted with proof or under oath or it ought not to be put in until we have a chance to study it.

The CHAIRMAN. I think that the whole matter should be studied, because the Chair has already ruled against the offer to place in the record the newspaper clipping referred to.

As I remember, this memorandum restates it, and I haven't any reason for, at the moment, changing my ruling on the clipping that was offered. We will proceed with the hearing.

Mr. WILLIAMS. Do I understand the Chair has reserved ruling on that point?

The CHAIRMAN. That was the statement I made.

Mr. CHADWICK. Mr. Chairman, resuming the presentation of documentary evidence in the form of the exhibits read from the record of the Subcommittee on Privileges and Elections to the Committee on Rules and Administration under Senate Resolution 187 and Senate Resolution 304, I refer to the exhibit No. 20, which contains the word "copy" in parentheses, which is dated May 10, 1952, which is a letter from Senator Gillette to Senator McCarthy, which I now read:

MY DEAR SENATOR MCCARTHY: I acknowledge receipt of your letter of May 8 which was written in response to a letter addressed to you by me as chairman of the Subcommittee on Privileges and Elections under date of May 7. Your reply of the 8th states factual matter in connection with the charges made by Senator Benton in his resolution and which have been listed as "charge No. 2."

You will note from my letter of the 7th that I stated in the concluding paragraph "I shall extend to you the opportunity to appear at the hearings for the purpose of presenting testimony relating to this charge. The hearing in this case will probably continue for several days and we shall make whatever arrangements for your appearance are most convenient for you."

The subcommittee, in determining its further action relative to the Benton resolution, decided to take up the charges one by one and, if additional evidence was desired in addition to the staff report that was before us, that the subcommittee would undertake to develop further testimony where it seemed desirable to do so. At their meeting on May 7 the subcommittee concluded that they wished to take some additional testimony with reference to charge No. 2 and fixed next Monday, May 12, as the date for the hearing, at which witnesses under them could be heard.

It seemed the courteous thing to do to invite you to attend so you could have full opportunity to present additional evidence or, at a later period, to present any evidence you might wish to make available to us in refutation or explanation of any evidence which you adduced at the hearing. That was the purpose of my letter to you and you were assured that the opportunity will continue to be yours to present such matter as you wish to present to us in connection with this hearing and to attend, if you desire to do so.

I assume also that you would have no objection to having put in the record of the hearings your letter of the 8th. Unless I receive the request from you for me not to do so when the hearings are opened next Monday, I shall put in the record my letter of the 7th addressed to you and your reply of the 8th addressed to me.

With personal greetings, I am

Sincerely,

GUY M. GILLETTE.

And initials.

The next is exhibit 21, which is a letter dated May 11, 1952, signed by Senator McCarthy, and addressed to Senator Guy Gillette, Senator A. S. Monroney, and Senator Thomas Hennings.

GENTLEMEN: I have learned with regret that your public hearings are to open tomorrow without the presence of your star witness. You have my deepest sympathy.

Some doubting Thomases might question the importance of this witness, except that after nearly a year of investigating, you and your staff decided that the public hearings must open with his intelligently presented, clear-cut exposé of the dangers of McCarthyism. The Nation owes you a debt of gratitude for so carefully and honestly developing this witness who could have advised the Senate and the voters of Wisconsin to get rid of McCarthy. If only you had set the hearings 10 days earlier before the judge committed your star witness to an institution for the criminally insane, you would not have been deprived of this important link in the chain of evidence against McCarthy.

Some shallow thinkers may say that you gentlemen are dishonest to have planned to use your committee as a sounding board to headline the statements of a witness after your staff had reported he was mentally unbalanced. I beg you not to let this distract you from the honest, gentlemanly job you are doing. Those critics fail to realize that everything is ethical and honest if it is done to expose the awfulness of McCarthyism. After all, had not your staff reported that while this witness was mentally deranged, his mental condition would help to make him an excellent witness for you.

Certainly, you cannot be blamed for not knowing that some unthinking judge would do the country the great disservice of committing him to a home for the insane before the committee had a chance to publicize and place its stamp of approval on his statements about McCarthy. Certainly, you cannot be blamed for being unable to distinguish between his testimony and the testimony of the other witness, Benton, who asked for and was given the right to appear before your committee and publicly "expose" McCarthy.

The Communist Party, which is also doing an excellent job of exposing the evils of McCarthyism, has repeatedly proclaimed that no stone be left unturned in the effort to remove McCarthy from public life. As Lenin said, "resort to lies, trickery, deceit, and dishonesty of any type necessary," in order to destroy those who stand in the way of the Communist movement.

I ask you gentlemen not to be disturbed by those who point out that your committee is trying to do what the Communist Party has officially proclaimed as its No. 1 task. You just keep right on in the same honest, painstaking way of developing the truth. The thinking people of this Nation will not be deceived by those who claim that what you are doing is dishonest. After all, you must serve the interests of the Democrat Party—there is always the chance that the country may be able to survive. What better way could you find to spend the taxpayers' money? After all, isn't McCarthy doing the terribly unpatriotic and unethical thing of proving the extent to which the Democrat administration is Communist ridden? Unless he can be discredited, the Democrat Party may be removed from power.

Again may I offer my condolences upon your failure to have your star witness present as planned to open the testimony. Do you not think the judge who committed him should be investigated?

Sincerely yours,

JOE MCCARTHY.

The next exhibit is exhibit No. 38 from that report, containing the word "copy" in brackets at the head. It is dated November 7, 1952, and it is addressed to the Honorable Joseph R. McCarthy, United States Senate, Washington, D. C.:

DEAR SENATOR MCCARTHY: In connection with the consideration by the Subcommittee on Privileges and Elections of Senate Resolution No. 187, introduced by Senator Benton on August 6, 1951, as well as the ensuing investigation, I have been instructed by the subcommittee to invite you to appear before said subcommittee in executive session. Insofar as possible, we would like to respect your wishes as to the date on which you will appear. However, the subcommittee plans to be available, for this purpose, during the week beginning November 17, 1952.

It will be appreciated if you will advise me at as early a date as possible of the day you will appear, in order that the subcommittee may arrange its plans accordingly.

Very truly yours,

PAUL J. COTTER, *Chief Counsel.*

PJC: miv.

The next exhibit is exhibit No. 40, a photostat. It is a letter from Ray Kiermas, administrative assistant to Senator McCarthy. It is addressed to Mr. Paul Cotter, chief counsel, Subcommittee on Privileges and Elections, United States Senate, Washington, D. C., and reads as follows:

DEAR MR. COTTER: Inasmuch as Senator McCarthy is not now in Washington, I am taking the liberty of acknowledging receipt of your letter of November 7.

I have just talked to the Senator over the telephone and he does not know just when he will return to Washington. It presently appears that he will not be available to appear before your committee during the time you mention. However, he did state that if you will let him know just what information you desire, he will be glad to try to be of help to you.

Sincerely yours,

(Signed) RAY KIERMAS,
Administrative Assistant to Senator McCarthy.

RK/dl.

The letter was dated November 10, 1952.

The next exhibit is exhibit No. 41, a letter dated November 21, 1952, to the Honorable Joseph R. McCarthy, a letter from Tomas Hennings, with quotations from several letters. It is difficult to quickly pick up the conclusion of it. The letter is as follows:

DEAR SENATOR MCCARTHY: As you will recall, on September 25, 1951, May 7, 1952, and May 10, 1952, this subcommittee invited you to appear before it to give testimony relating to the investigation pursuant to Senate Resolution 187.

Under date of November 7, 1952, the following communication was addressed to you:

"DEAR SENATOR MCCARTHY: In connection with the consideration by the Subcommittee on Privileges and Elections of Senate Resolution No. 187, introduced by Senator Benton on August 6, 1951, as well as the ensuing investigation, I have been instructed by the subcommittee to invite you to appear before said subcommittee in executive session. Insofar as possible, we would like to respect your wishes as to the date on which you will appear. However, the subcommittee plans to be available, for this purpose, during the week beginning November 17, 1952.

"It will be appreciated if you will advise me at as early a date as possible of the day you will appear, in order that the subcommittee may arrange its plans accordingly.

"Very truly yours,

"PAUL J. COTTER, *Chief Counsel.*"

On November 14, 1952, the subcommittee received the following communication, dated November 10, 1952:

"DEAR MR. COTTER: Inasmuch as Senator McCarthy is not now in Washington, I am taking the liberty of acknowledging receipt of your letter of November 7.

"I have just talked to the Senator over the telephone and he does not know just when he will return to Washington. It presently appears that he will not be available to appear before your committee during the time you mention. However, he did state that if you will let him know just what information you desire, he will be glad to try to be of help to you.

"Sincerely yours,

"RAY KIERMAS,
Administrative Assistant to Senator McCarthy."

The subcommittee is grateful for your offer of assistance, and we want to afford you with every opportunity to offer your explanations with reference to the issues involved. Therefore, although the subcommittee did make itself available during the past week in order to afford you an opportunity to be heard, we shall be at your disposal commencing Saturday, November 22 through, but not later than, Tuesday, November 25, 1952.

This subcommittee has but one object, and that is to reach an impartial and proper conclusion based upon the facts. Your appearance, in person, before the subcommittee will not only give you the opportunity to testify as to any issues of fact which may be in controversy, but will be of the greatest assistance to the

subcommittee in its effort to arrive at a proper determination and to embody in its report an accurate representation of the facts.

Pursuant to your request, as transmitted to us through Mr. Kiermas, we are advising you that the subcommittee desires to make inquiry with respect to the following matters:

(1) Whether any funds collected or received by you and by others on your behalf to conduct certain of your activities, including those relating to communism, were ever diverted and used for other purposes inuring to your personal advantage.

(2) Whether you, at any time, used your official position as a United States Senator and as a member of the Banking and Currency Committee, the Joint Housing Committee, and the Senate Investigations Committee to obtain a \$10,000 fee from the Lustron Corp., which company was then almost entirely subsidized by agencies under the jurisdiction of the very committees of which you were a member.

(3) Whether your activities on behalf of certain interest groups, such as housing, sugar, and China, were motivated by self-interest.

(4) Whether your activities with respect to your senatorial campaigns, particularly with respect to the reporting of your financing and your activities relating to the financial transactions with and subsequent employment of Ray Kiermas, involved violations of the Federal and State Corrupt Practices Acts.

(5) Whether loan or other transactions which you had with the Appleton State Bank, of Appleton, Wis., involved violations of tax and banking laws.

(6) Whether you used close associates and members of your family to secrete receipts, income, commodity and stock speculation, and other financial transactions for ulterior motives.

We again assure you of our desire to give you the opportunity to testify, in executive session of the subcommittee, as to the foregoing matters. The 82d Congress expires in the immediate future and the subcommittee must necessarily proceed with dispatch in making its report to this Congress. To that end, we respectfully urge you to arrange to come before us on or before November 25, and thus enable us to do our conscientious best in the interests of the Senate and our obligation to complete our work. We would thank you to advise us immediately, so that we may plan accordingly.

This letter is being transmitted at the direction and with the full concurrence of the membership of this subcommittee.

Sincerely yours,

THOMAS C. HENNINGS, Jr., *Chairman.*

with initials.

The date of the letter which I have just read is November 21, 1952.

I turn aside at this point from the sequence of the exhibits quoted from the H-H-H report—

The CHAIRMAN. And when you say "H-H-H report," what are you referring to, Mr. Chadwick?

Mr. CHADWICK. I refer to the report heretofore mentioned, the report of the Subcommittee on Privileges and Elections to the Committee on Rules and Administration in the investigation pursuant to Senate Resolution 187 and Senate Resolution 304.

The CHAIRMAN. And which Congress?

Mr. CHADWICK. The 82d Congress, I think.

The CHAIRMAN. And what does the "H-H-H" stand for?

Mr. CHADWICK. The initials of the three members of the subcommittee who signed the report.

The CHAIRMAN. Please name them.

Mr. CHADWICK. Hennings, Hayden, and Hendrickson.

The CHAIRMAN. Proceed.

Mr. CHADWICK. I have in my hand an original telegram addressed to Senator Joseph McCarthy which was produced at my request this morning by his attorneys and delivered pursuant to an informal call, and I understand—Mr. Williams is listening—that he is willing to

enter into a stipulation that this telegram shall be read into evidence at this time.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Will you speak louder, Mr. Williams, for the record.

Mr. WILLIAMS. My microphone is dead, Mr. Chairman. That is why you can't hear me. Yes, I have agreed that that telegram may be read into the record as authentic and as having been received on the day which it purports to have been received on.

Mr. CHADWICK. Thank you, sir. Reading the telegraphic script at the top, it is an instrument with the number MAS20M.WA237 Long Govt, NLPW—Washington, D. C., 21, Senator Joseph McCarthy, Appleton, Wis.:

Today you were advised by letter delivered by hand to your office of the principal matters which the subcommittee desires to interrogate you in furtherance of your express desire transmitted to the committee by your administrative assistant that—

and a false letter—

Mr. Ray Kiermans under date of November 10. The subcommittee appreciates your willingness to help in the completion of the work in connection with the investigation of Resolution 187 and the investigations predicated thereon. Your prompt appearance before the subcommittee can save the Government much effort and expense. We are sure that you want to be of help to us in arriving at a proper determination of the issues in controversy. We are, therefore, at your disposal in executive session and for your convenience suggest that the subcommittee is available to you commencing with tomorrow, Saturday, November 22, but not later than Tuesday the 25th, to enable the subcommittee to hear you and allow time thereafter to prepare the subcommittee report.

Senator Benton has also been notified to appear by similar communication. This action is being taken at the direction and with the full concurrence of the committee members.

There is a typed signature to the telegram, the customary form, "Senator Thomas C. Hennings, Jr., chairman, Senate Subcommittee on Privileges and Elections," and final typed memorandum is not significant to me," 187 22 25."

Senator CASE. Mr. Chairman?

The CHAIRMAN. Senator Case.

Senator CASE. I should like to ask counsel whether there is any notation or identification on the telegram to indicate the date of its delivery.

Mr. CHADWICK. The Senator no doubt heard the date, which is the 21st.

Senator CASE. That is the date of the transmission.

Mr. CHADWICK. That is true, sir.

Senator CASE. Is there any stamping or other indication on the telegram to indicate the time of its delivery?

Mr. CHADWICK. Senator, I have already read, without asserting the significance, from the telegram "187 22 25." I do not think that answers your question.

However, at the head of the telegram in purple ink by stamp appears the following matter: "1952 November 22 A. M. 8 12."

Senator CASE. May I see the telegram, please?

Mr. CHADWICK. Yes.

Mr. Chairman, it appears to me that the stamping in reddish purple ink reads "1952, November 22, A. M. 8:12."

In the black stamp at the top of the telegram is "Rec'd December 1, 1952."

The CHAIRMAN. Since there has been a stipulation with respect to this telegram, I direct an inquiry to Mr. Williams: Do you have any data which would help us identify the date on which it was delivered or received by Senator McCarthy?

Mr. WILLIAMS. I have not at this time, sir. I was just asked about the telegram last night at 11:30, and I ferreted it out of the files so that Mr. Chadwick might have it this morning.

I have not consulted with Senator McCarthy as to his recollection as to when it was received, so I cannot help the committee at this time, but I will be glad to consult with him further this morning.

Senator CASE. Mr. Chairman, I would like—pardon.

Mr. WILLIAMS. I will direct his attention to this telegram, and ask him if he has an independent recollection on this subject.

The CHAIRMAN. I assume that the exact date of the delivery of the telegram is not too important; at least, it was delivered, because it was produced by Senator McCarthy.

Senator CASE. Mr. Chairman, there is some significance in the delivery date of the telegram.

The CHAIRMAN. Senator Case.

I am advised by the operator of the amplifying equipment that only two microphones can be on at a time, and if you will wait until I indicate who is to speak then he will turn on the microphone for that particular one.

This amplifying system is not working any too well, so we have to watch that, otherwise you may speak into a dead microphone.

Now, proceed, Senator Case.

Senator CASE. Mr. Chairman, the significance of the delivery dates of the telegrams is this: That it was apparent on reading exhibit No. 42, as it appears in the so-called H-H-H Report that the telegram which appears in the print of the committee report as exhibit No. 42 was incorrectly placed, if it was sent, because it follows the letter of November 21, and the telegram that appears in the print invites Senator McCarthy to appear before the committee on November 20.

That obviously was in error, in some date or something of that sort, so, in endeavoring to run that down, it appeared to me, that the telegram, which shows as exhibit No. 42, if sent, should have been sent on the 14th of November, because the first sentence of it refers to "having received the reply of your administrative assistant received today," and the letter of November 21, 1952, recites that on November 14, 1952, the subcommittee received the following communication, which was the letter from Senator McCarthy's assistant.

Consequently, I suggested to counsel yesterday, after noting this, that there must have been some other wire that was referred to in the letter which appears as exhibit No. 44, by Senator McCarthy, dated November 28, which is not yet read for the record, but when it is it will be noted that it says:

I just received your wire of November 22 in which you state you would like to have me appear before your committee between November 22 and 25.

Obviously, if he just received it on the 28th of November, he could not have appeared before the committee sometime between November 22 and 25.

I was wanting to determine if the telegram did show the receipt on that date or a prior date. All I know is that from the stamping of the telegram—there are two stampings to which attention has previously been called—in the reddish purple ink, of November 22, a. m. 8:12. That may have been the time that the telegram was received by the Western Union. But above in black ink is stamped "received December 1, 1952," so maybe that does not shed too much light, but it seems to me it would be—

The CHAIRMAN. It may possibly be cleared up when the other exhibits are placed in the record. At any rate, this exhibit will now be received in the record.

Mr. WILLIAMS. May I see that exhibit, Mr. Chairman?

The CHAIRMAN. You may, sir.

You may proceed, Mr. Chadwick.

Mr. CHADWICK. Mr. Chairman, I refer to exhibit No. 44, in the sequence of exhibits, which we are reading. This is a letter signed by Senator McCarthy, and addressed to Senator Thomas C. Hennings, Jr., chairman, Subcommittee on Privileges and Elections, Senate Office Building, Washington, D. C., and is dated November 28, 1952. It reads as follows:

Senator THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Privileges and Elections,
Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: I just received your wire of November 22 in which you state you would like to have me appear before your committee between November 22 and 25.

As you were informed by my office prior to the time you sent this wire, I was not expected to return to Washington until Thursday, November 27, on which date I did return.

Sincerely yours,

JOE MCCARTHY.

Mr. WILLIAMS. That is also signed.

Mr. CHADWICK. Yes, it is signed by Senator Joe McCarthy.

Senator CASE. Mr. Chairman, obviously, if he did not receive the wire until after the date that he was asked to appear he could not be in contempt for failing to respond to it.

That was my only purpose in bringing out the significance of the date there.

I think it should be determined when the telegram was received. It makes quite a bit of difference. He did not have the physical opportunity to appear on the suggestion.

The CHAIRMAN. You may proceed.

Mr. CHADWICK. I desire to make this statement in fairness to all parties particularly because the exhibits from which we are quoting are available in public form.

There was among the number an exhibit No. 42 which was also a Western Union telegram. It was a telegram from Senator Thomas C. Hennings addressed to Senator McCarthy at three different addresses.

We have made the most careful possible investigation, Mr. Chairman, and we cannot convince ourselves that that telegram was necessarily sent; neither do we wish to be understood as stating that it was not, but we are not presently in position to establish that it was sent.

We also think that a date which would have attached to that telegram, if it had been sent, was probably the 14th of 1952.

The CHAIRMAN. The 14th of what month?

Mr. CHADWICK. The 14th of November.

Mr. WILLIAMS. I want to say this, if I may, Mr. Chairman.

Last night when Mr. Chadwick called me he asked me to produce the telegram which I have in fact produced this morning here.

At that time he told me that there was some doubt as to the authenticity of the telegram which appeared in the report over Senators Hennings', Hendrickson's, et cetera's signatures, in other words, he had some doubt as he just expressed as to whether that telegram was in fact ever sent. Of course, it is significant that bears no date as is shown in the report itself.

I have combed Senator McCarthy's files this morning in an effort to supply this.

I want to tell you this, Mr. Chadwick, so that you will have further light on this subject, I find no copy of such a document as appears in this report here, so that your conviction as expressed to me that this telegram was probably never sent is certainly supported by our search of the files.

Mr. CHADWICK. Do I understand that you said to me that you have no original, or, in other words, telegraphic copy of the telegram?

Mr. WILLIAMS. That is right.

Senator CASE. Assistant counsel is sitting at my left, and he has a folder here which I understand is a folder from the files of the so-called Hennings committee. And in it appears a typewritten draft of a telegram which is identical in wording to the purported exhibit No. 42 in the Hennings report.

There are an original and four copies of that telegram. And on the face of the original is written in pencil the words "not sent."

I think that would confirm the fact that probably it has not been sent. This is from the stapled files here from the Hennings committee.

If the record is to be accurate, it seems to me that it ought not to be suggested that the telegram, or what purports to be a telegram, which is exhibit No. 42 in the Hennings report—it ought not to be indicated that it ever was sent unless there is some evidence that it was.

The CHAIRMAN. The record at the moment, as I understand it, says that there was doubt as to whether it was ever sent or not, and I assume that from the standpoint of the evidential value, it would be considered that it was not sent.

Mr. CHADWICK. My phraseology on that was dictated by a sense of precaution. This is a carefully prepared telegram, and it does contain in notation the words "not sent," which I thought was strong evidence that this telegram could not be sent. But I could not affirm that another telegram of substantially the same phraseology or even this same phraseology had not been sent, and we desire to be allowed to continue our investigations on it so that we may have the final proof.

Mr. Williams, may I borrow back the telegram which I redelivered to you?

The CHAIRMAN. That would be in the record, and would be one of the exhibits. So it belongs in the committee files now.

Mr. CHADWICK. I desire to offer in evidence and have marked by the stenographer as "Committee Exhibit No. 1" the telegram which has

been read, being a telegram dated Washington, 21st, addressed to Senator McCarthy, and signed by Senator Gillette.

Mr. WILLIAMS. What date was that again, Mr. Chadwick?

Mr. CHADWICK. It is the telegram which contains the word "21," and underneath it, 1952, November 22, a. m. 8: 12.

Mr. WILLIAMS. And would you read to me again the date on which that purports to have been received?

Mr. CHADWICK. It contains at the top, by stamp, Received, December 1, 1952, and for further identification, it contains figures and initials which are no doubt telegraphic detail which we cannot explain, 31381, SVC.

Mr. WILLIAMS. Now, do I understand that that telegram is being offered in lieu of the one which appears on page 99 of what we will call the Hendrickson, Hennings, Hayden report of exhibit No. 42?

Mr. CHADWICK. I cannot confirm the "in lieu of." It is offered as a telegram in the exchange of correspondence which has been heretofore read. We did not offer or read the exhibit No. 42, which is the telegram referred to by Senator Case and which contains on its face in pencil the statement, "Not sent."

The CHAIRMAN. Counsel advised the chairman that that is the telegram, Mr. Williams, that was read.

It will be received in evidence as a part of the committee files.

(The telegram referred to was marked "Committee Exhibit No. 1" and will be found in the files of the committee.)

The CHAIRMAN. We will pause in the deliberations here for a few moments so that one of the exhibits may be examined.

Mr. CHADWICK. Mr. Chairman, I will proceed with the reading of exhibit No. 45, on the letterhead of the United States Senate. It is dated December 1, 1952. It is addressed to Senator Thomas C. Hennings, Jr., chairman of the Committee on Privileges and Elections, and it is signed at the end, "Sincerely yours, Joe McCarthy."

DEAR MR. HENNINGS: This is to acknowledge receipt of yours of November 21 in which you state that your object is to reach an "impartial and proper conclusion based upon the facts" in the Benton application, which asks for my removal from the Senate.

I was interested in your declaration of honesty of the committee and would like to believe that it is true. As you know, your committee has the most unusual record of any committee in the history of the Senate. As you know two members of your staff have resigned and made the public statement that their reason for resignation was that your committee was dishonestly used for political purposes. Two Senators have also resigned. One, Senator Welker, in the strongest possible language indicted your committee for complete dishonesty in handling your investigation. Senator Gillette also resigned without giving any plausible reason for his resignation from the committee. Obviously, he also couldn't stomach the dishonest use of public funds for political purposes. For that reason it is difficult for me to believe your protestations of the honesty of your committee.

I would, therefore, ordinarily not dignify your committee by answering your letter of November 21. However, I decided to give you no excuse to claim in your report that I refused to give you any facts. For that reason you are being informed that the answer to the six insulting questions in your letter of November 21 is "No." You understand that in answering these questions I do not in any way approve of nor admit the false statements and innuendoes made in the questions.

I note with some interest your reference to my "activities on behalf of certain special interest groups, such as housing, sugar, and China." I assume you refer to my drafting of the comprehensive Housing Act of 1946 which was passed without a single dissenting vote in the Senate, either Democrat or Republican. Neither you nor any other Senator has attempted to repeal any part of that Housing Act. Or perhaps you refer to the slum-clearance bill which I drafted

and introduced in 1948, which slum-clearance bill was adopted in toto by the Democrat-controlled Senate in 1949.

When you refer to sugar, I assume you refer to my efforts to do away with your party's rationing of sugar, as I promised the housewives I would during my 1946 campaign. If that were wrong, I wonder why you have not introduced legislation in the Democrat-controlled Senate to restore sugar rationing. You have had 2 years to do so.

I thought perhaps the election might have taught you that your boss and mine—the American people—do not approve of treason and incompetence and feel that it must be exposed.

You refer to the above as "special interests." I personally feel very proud of having drafted the Housing Act in 1948 which passed the Congress without a single dissenting vote—a Housing Act which contributed so much toward making it possible for veterans and all Americans in the middle- and low-income groups to own their own home. Likewise, I am proud of having been able to fulfill my promise to American housewives to obtain the derationing of sugar. I proved at the time that rationing was not for the benefit of the housewives but for the commercial users.

I likewise am doubly proud of the part I played in alerting the American people to your administration's traitorous betrayal of American interests throughout the world, especially in China and Poland.

You refer to such activities on my part as "activities for special interests." I am curious to know what "special interests" you mean other than the special interest of the American people.

This letter is not written with any hope of getting an honest report from your committee. It is being written merely to keep the record straight.

Sincerely yours,

JOE McCARTHY.

With initials.

That, sir, completes the record of the exhibits of letters in connection with the presentation of our point I.

The CHAIRMAN. Now, Mr. Chadwick, have you proceeded to examine the Congressional Record with reference to further matters pertaining to the subject or the incident referred to in category I?

Mr. CHADWICK. We have, sir, and I request the committee to take judicial notice of the Congressional Record, Senate, August 2, 1954, page 12318, with the following quotations:

Mr. HENNINGS. He was invited 5 times, but did not appear before the subcommittee upon any occasion except 1, and that was in order to testify with respect to a resolution which the junior Senator from Wisconsin himself had introduced in order to investigate another Senator, former Senator Benton of Connecticut.

That is evidence that Senator McCarthy had not appeared in reply to the invitations which have been read.

Similarly, I asked the committee—

The CHAIRMAN. You may proceed to read—

Mr. CHADWICK. To read from the Congressional Record?

The CHAIRMAN. We will take judicial notice of the Congressional Record of the quotations you have read. Give the date and the page.

Mr. CHADWICK. From the Congressional Record of the Senate, August 2, 1954, at page 12331.

Mr. WILLIAMS. Mr. Chairman, I do not want my silence on this to be construed as an acquiescence to the general principle that excerpts can be taken from the record of Congress, statements made on the floor of the Senate by any other Senator, and introduced in this record as competent evidence: we have not objected to the particular statement involved because we feel that it is not prejudicial in any way.

But I do not want my silence to be construed as an acquiescence of the evidentiary principle.

The CHAIRMAN. You may proceed.

Mr. CHADWICK. In the interests of fairness——

The CHAIRMAN. Have you given the date and page?

Mr. CHADWICK. I did, sir.

I desire to say this is read on our part in the interest of fairness and accuracy for the purpose of putting into the record Senator McCarthy's statement on the subject of the Lustron matter, lest it appear or be thought that he made no reply to the matter in any particular.

The CHAIRMAN. You may read it.

Mr. CHADWICK (reading):

Mr. MCCARTHY. So many misstatements have been made about the Lustron matter, that I wonder whether the Senator from Idaho would like to have me give him the facts in that case, if I may.

I had been writing, and I wrote, the Housing Act of 1948. I took up with the special House committee the question on whether we should do something to try to bring to the attention of the young veterans the various aids which Congress had provided for them. The committee did not manifest any enthusiasm in response to my suggestion.

I then wrote, with the aid of some very able Washington newsmen, what I thought was a complete, thorough dissertation on what aids were available and how they could be obtained.

Incidentally, I offered it to some of the magazines which today are screaming about this matter. I offered it to them free of charge if they would publish it. But they did not. I received offers from various corporations in the housing business, who wanted to publish it. Lustron made what I thought was the best offer at the time. Of course, later on Lustron went bankrupt. The Lustron offer was 10 cents a copy for the first 100,000 copies, and 5 cents a copy for each succeeding copy. The testimony of the head of Lustron Corp., when he appeared before the Banking and Currency Committee, was, as I recall, that that was one of the few projects upon which they made money. They lost money and went bankrupt on the others. But they made some money on that, at the rate of 10 cents a copy.

I may say that if I were embarrassed at all regarding the Lustron deal, it would be because my efforts were worth only 10 cents a copy.

Mr. Chairman, that concludes the matters to which I and the staff presently desire to call the attention of the committee on point No. 1 of the matters which came under the notice which you gave.

With your consent, my associate will proceed with the presentation of the matters under point No. 4.

Mr. WILLIAMS. Mr. Chairman.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Before we leave category No. 1 of the charges I would like to call certain facts to the attention of the committee which I think cast grave doubt on the relevancy, materiality of all of this evidence.

Of course, I do not propose to speak in the face of your ruling of yesterday that I should submit a legal brief on the law. I do not propose to discuss the law at all.

I propose to discuss certain facts which are now of record which cast grave doubt on the materiality of everything that has been offered.

The Benton resolution, which was Resolution No. 187, introduced in the 82d Congress calls, as I understand it, for an investigation of Senator McCarthy looking toward his expulsion from the Senate.

The significant thing about that resolution is that it was never passed by the Senate.

I will stand on this statement, this is the first time in the history of the United States when a resolution looking toward the expulsion of a United States Senator was passed authorizing hearings without a

vote by the Senate. I use the term "passed." It was never passed. It was simply referred to the Rules Committee, and the Rules Committee in turn referred it to the Subcommittee of the Committee on Rules and Administration. That is significant.

The second significant thing about this resolution which in my opinion invalidates the whole proceeding pursuant thereto is this, that nowhere contained in that purported resolution, which was never acted upon by the United States Senate, but which nevertheless calls for a hearing looking toward the expulsion of a Senator, in an unprecedented form—that resolution contained no allegations, no charges, no averments of any kind against Senator McCarthy as it was in its original form.

So unconscionable did the Senate of the 83d Congress think it was, that a resolution even calling for censure of another Senator did not have specifications, allegations, and averments, that it voted 75 to 12, to require the filing of specifications and averments, and the reference of those specifications to this committee.

That was the way the 83d Congress deported itself, because it followed all of the precedents of the Senate.

The other significant thing about this resolution as it now appears of record, first of all, it was never passed by the Senate; secondly, it had no allegations or specifications against Senator McCarthy. The other significant thing is that the resolution specifically authorizes the committee to investigate Senator McCarthy from the time of his election to the Senate in 1946, and I dare say that 40 percent of the report of which this committee can take judicial notice, as I understand its rules, pertains to matters that antedated his election to the Senate, because this committee as evidenced by its own report conducted a cradle-to-1952 investigation of Senator McCarthy.

Many of the matters referred to in the report go back so far as 6, 8 years before his election to the Senate.

Therefore, the committee in its report as evidenced by the very record which has been referred to here this morning was acting outside of the scope of its authority from its first day.

Another thing was this, that it is evident now from the record as introduced here this morning, Senator McCarthy, as the record indicates, requested the right in the expulsion proceeding which Senator Benton had initiated to appear in the hearing and confront his accusers and cross-examine them.

Again I say that the history of the Senate shows that a proceeding looking toward censure and expulsion is a judicial proceeding. The precedents are so numerous that I will not bore this committee by alluding to them, but everything that has ever been written about article I, section 5, of the Constitution, every authority who has ever written a single line about it, has said that a proceeding thereunder is a judicial proceeding, and the minimum safeguards that adhere to any accused in any judicial proceeding adhere to the defendant in an expulsion or censure proceeding. And those minimal safeguards that adhere to any judicial function are the right to be apprised of the charges against the accused and the right to face his accusers, and to cross-examine them, to test their credibility in the crucible of cross-examination.

I want to point out that from the very record that has been introduced in this proceeding over the past 2 days it is evident, No. 1,

that there was no authority from the Senate for the conduct of the hearings at the start.

No. 2, there was no specification of charges.

No. 3, there was a denial of the right to cross-examine by the Gillette committee, so that the committee was operating in an unprecedented manner that flouted every case that ever had been decided by the United States Senate from 1792.

Furthermore, the resolution clearly, unequivocally, and unmistakably states that they are authorized only to expend funds to investigate Senator McCarthy from the date of his election. And yet the report, the so-called Hennings, Hendrickson, and Hayden report, shows, from even a cursory reading, that the committee was concerned with things far, far outside the scope of its resolution; so that if the statement were made that that committee was acting in an unauthorized way and that it was expending funds of taxpayers in an unauthorized fashion, that statement, by the very record that is before us, was true, and true in all respects.

Furthermore, from even a cursory reading of this proceeding, it is clear that although Senator Benton—

The CHAIRMAN. Just a moment, Mr. Williams. You referred to that report a number of times; and since you have been and are considering it as a base, I think probably we will consider the matter of having the whole report made a part of the record.

Mr. WILLIAMS. The part that I am alluding to, sir—

The CHAIRMAN. Is the report on S. 183 of the 82d Congress, as I recall.

Mr. WILLIAMS. Yes, sir.

Now, may I say this: Although there are no charges, and although there were no specifications, and although there was not a single allegation against Senator McCarthy in the original resolution looking toward his expulsion, Senator Benton did appear before the Hayden-Gillette committee—I believe he appeared on September 28, of 1951, if my memory serves me—and he did in fact outline 10 cases on Senator McCarthy to that committee.

The significant thing about the report is that on all the sworn evidence that that committee heard only four pages of this volume are devoted to it. The rest of this volume that I hold in my hand, which is the Hayden report, the Hennings report, and the Hendrickson report, if you will, is devoted to unsworn hearsay statements, never taken under oath, of staff investigators. That was the kind of judicial proceeding that that committee conducted, looking toward the expulsion of a United States Senator.

The CHAIRMAN. Mr. Williams—

Mr. WILLIAMS. And it is our position, sir—

The CHAIRMAN. Just a moment, Mr. Williams.

I do not mind giving you the time to make the statement, but we are not trying over again the matters that were set forth in the so-called Hayden report and Senate Resolution 187. I stated at the outset that we were not concerned with whether those charges contained in that resolution were true or false. The matter we were conducting our investigation on is the charge of contempt with respect to the Senate committee; whether it made any report or not or whether the Senate had done anything about it is not at issue here.

But I call your attention also—if I can comment on that while you are at it—the Senate did pass without a dissenting vote on April 8, 1952, Senate Resolution 300, which, in effect, as we construe it, confirmed and approved the activities of the committee to that point, and also confirmed the jurisdiction.

Mr. WILLIAMS. My point is this, Mr. Chairman—

The CHAIRMAN. And that, as I understand, was submitted for the very purpose of testing out the things we have just been talking about, and the committee takes judicial knowledge of the fact the Senate by a unanimous vote has in effect apparently passed upon what you were talking on.

Mr. WILLIAMS. Let us assume that that, sir, is in all respects correct. If you can concede that the Senate's action on the date which you just recited was a retroactive authority to this committee, nonetheless it does not give the committee wider authority than the Benton resolution originally gave it, and the Benton resolution originally authorized an investigation of Senator McCarthy only from the time that he was a Senator, whereas the report shows that this committee was concerned with matters that antedated by 6 to 8 years his senatorial career.

The CHAIRMAN. Let me ask you this question: As I recall, much of the investigation—now that is not in evidence yet, and, of course, you are talking about something that is not even in evidence, that report—but as I recall, there were quite a large number of matters mentioned in that same report with respect to which the committee investigated that postdated the election of Senator McCarthy in 1946.

Mr. WILLIAMS. May I have just a minute, Mr. Chairman?

Mr. Chairman, if I may conclude my thought, the vote on the Senate floor, which I understand was 60 to nothing, can in no way as I understand it be construed as a ratification of what the committee had theretofore done.

It may have been a ratification of the original resolution under which they purported to operate, but I direct your attention, sir, to the fact that the original resolution carefully delimits and delineates the scope of the investigation which the committee far, far exceeded.

The CHAIRMAN. Well, of course the resolution itself is in the record, and that will be considered by the committee in going over the evidence which is submitted. It was placed in the record, and I indicated at the beginning, it was done so whether it helped or hurt.

Mr. WILLIAMS. Yes, sir; that is why we want all the facts to come out, too.

The CHAIRMAN. They are in the record, sir.

Mr. WILLIAMS. The sole purpose of my remarks, Mr. Chairman, was to call the committee's attention to all of this evidence, because I feel, whether or not the committee was operating validly or invalidly, within or without the scope of its authority, has a great deal to do with the relevancy and germaneness of what has been offered heretofore, and my only purpose in calling these facts to the attention of the committee in this way was to show as best I could in a very cursory way the fact that this whole proceeding was invalid, sir, because it contravened all the precedents of the Senate.

They conducted a judicial proceeding with unsworn testimony. They included in the record things on which they had no evidence. They put in the record reports, hearsay reports of staff reporters, and

I say that 48 out of 52 pages of the report are wholly and exclusively predicated upon unsworn hearsay evidence.

No witness appeared before that committee to support 48 pages of findings out of 52 pages of findings. The only testimony that is supported by sworn testimony is the testimony on four pages which Senator Benton himself gave, so I say, sir, that never in the history of the United States Senate has an expulsion proceeding been conducted without any charges, without any right to cross-examine, outside the scope of the delineated authority, and finally on unsworn hearsay reports of staff investigators, never taken either in executive session or in open session.

The CHAIRMAN. Well, that may be one of the matters the Senate will want to consider, but of course we have the record. Whether it finally shows actions constituting contempt in other matters that are being charged or not, that is one of those things we will bring to the attention of the Senate, and we bring in that testimony because this is the means the Senate adopted for getting all the information so that it can decide that very question.

Now I call your attention, so that the record will be complete on this matter, not necessarily because it is needed but I think it ought to be referred to, to this; the last part of the so-called Benton resolution, Senate Resolution 187, has this to say, and I start on line 4 on page 4 of the print that was before the Congress:

and to make such further investigation with respect to the participation of Senator Joseph R. McCarthy in the 1950 senatorial campaign of Senator John Marshall Butler, and such investigation with respect to his other acts since his election to the Senate, as may be appropriate to enable such committee to determine whether or not it should initiate action with a view toward expulsion from the United States Senate of the said Senator Joseph R. McCarthy.

Now that is rather a blanket charge to make some investigations to say whether or not there should be charges filed. That is a far different matter than what you have been talking about.

And may I say that no matter how weak the case may have been—and I am not saying it was because I am not passing judgment on that—still the fact that a Senate committee was considering it, and through a series of letters and telegrams was attempting, to get Senator McCarthy there, and through a series of answers and letters to that committee he said some things with respect to the committee, whether they were right or wrong in what they were actually doing, which the Senate has felt of sufficient importance to refer to us to investigate at least.

Mr. WILLIAMS. I want to say, sir, that that blanket charge doesn't stretch so far as to cover 1944, though. Blanket as it is, it goes only back to 1947.

The CHAIRMAN. Well, we are not considering the matters in that at all. We are only considering the conduct, and that is the ground of the charge, his conduct with respect to a duly constituted committee.

Whether they had a faulty resolution, whether they had one that didn't say anything much at all, or not, so far as I can see now is wholly immaterial.

What is material is his conduct with respect to that committee and its activities.

Mr. WILLIAMS. May the record show also, Mr. Chairman—and I don't mean to press this matter—I do have, as I explained yesterday, another motion on this particular subject.

The CHAIRMAN. At the proper time we will consider that, because we have had a very short time to prepare this matter, and before we finally conclude the presentation of what evidence we have been able to gather, we will check again, and if there are any loose ends, why we want to take care of them.

Senator CASE. Mr. Chairman—

The CHAIRMAN. Senator Case.

Senator CASE. I should like to determine, if I could, the position of counsel on one point.

The CHAIRMAN. You are addressing your remarks now to Mr. Williams?

Senator CASE. Yes.

Mr. Williams, is it your position that the acts or attitude of Senator McCarthy toward the Hennings committee, if contemptuous in nature, were not actually in contempt, because his committee was pursuing a course of inquiry which was outside the scope or authority of his committee?

Mr. WILLIAMS. It is my position, sir, that you cannot be in contempt of a body, be it judicial or legislative, which is acting without authority, and it is my position that when this particular body undertook to do something which nobody authorized it to do, not even the one man who proposed the investigation authorized it to do, nor tried to authorize it to do, it became a body which was acting in an unauthorized, illegal manner, and that, therefore, it is impossible that anyone could be contumacious in relationship to it in the legal sense.

Now, I want to say this to the Senator, in final answer to your question: It is significant, sir, that while this committee said clearly in its report that it had the right to subpoena Senator McCarthy, and that he was subject to the mandate of a subpoena, it, for reasons satisfactory to itself but never explained to others, did not see fit to subpoena him; it simply invited him.

Now, when you take Senator McCarthy's declination of the invitation to that committee, against the backdrop of the performance of the committee, I think we begin to see this case in proper perspective, because it is our position that the committee was unauthorized in its scope of operations, that it was deporting itself in a manner which was at war with all the precedents of the Senate by not taking testimony under oath on the charges or on any matters, but rather by taking hearsay, unsworn reports of staff investigators, and including them in a document which purports to be findings of facts in a judicial proceeding.

Senator CASE. Mr. Chairman—

The CHAIRMAN. Senator Case.

Senator CASE (continuing). I merely suggest that counsel for the committee, and I also suggest that counsel for Senator McCarthy, examine the record of the Senate a few days prior to the recent recess, in which Senator McCarthy presented the case of contempt against Corliss Lamont for, I think, the somewhat similar issue was involved there.

The Lamont claim was that the investigating committee was seeking to interrogate him, Lamont, on things outside the scope of the responsibility of the committee.

I think some statements that were made there, the presentations that were made, would be useful to both our counsel and to counsel for Senator McCarthy.

The CHAIRMAN. You have in mind that it may throw some light on the legal reasons and legal grounds underlying this matter, Senator?

Senator CASE. I am sorry, I did not hear that.

The CHAIRMAN. I say, do you have in mind that the Lamont matter may throw some light on the legal situation with respect to the matter we are now investigating?

Senator CASE. Well, that precise issue of whether or not the person could be in contempt of a committee if the committee sought to inquire outside the specific authority of the committee for the specific matter referred to it, was an issue that was discussed in the Lamont case when it was presented to the Senate a couple of weeks ago.

The CHAIRMAN. And the Senate, I think, adopted the resolution, did it not?

Senator CASE. The Senate did adopt the resolution.

Mr. WILLIAMS. To send it to the grand jury, and I understand the case went to the grand jury, and the grand jury will pass, I assume, on the prima facie validity of the committee which heard the evidence.

Senator CASE. Of course, there are some other angles to this matter of contempt here, the dating of this, the invitations to appear here, that had been read into the record this morning, all were subsequent to the adoption of Senate Resolution 300 by the Senate in which it, in effect, continued the committee and refused to withdraw the Senate Resolution 187.

Mr. WILLIAMS. Senator, I call your attention to the fact that much of the evidence that was introduced yesterday antedated that, of course, and the evidence that was introduced this morning in some cases postdated that period. But I again call your attention, Senator, to this fact: That all the resolution that was proposed and passed, 60 to nothing, did was to reaffirm the delineated jurisdiction of the subcommittee which had been laid out in the original Benton resolution. It did not expand it and, of course, the committee had transgressed and continued to transgress its jurisdiction both procedurally and substantively, procedurally in refusing to conduct a judicial proceeding such as this committee is doing, and such as the Senate did in this case.

The CHAIRMAN. You are arguing the law on it now, Mr. Williams. I call your attention also, so that we will have this in the record, to the fact that much of the testimony—I think I skimmed over the report, and I have it in mind—considerable testimony related to matters that postdate the election of Senator McCarthy and his induction into the Senate of the United States in 1947.

Mr. WILLIAMS. None of it was based on sworn testimony.

The CHAIRMAN. That is another matter.

We are talking about No. 1 now. Let us stick with that one. We are talking about the matter of whether there was any material before the committee concerning a matter that happened after his induction into the United States Senate in 1947.

Now the committee takes the position, as I have indicated before, that it is our duty to get all of this evidence, no matter who it helps or hurts, but I do want to point out to you that we are not just out on a wild-goose chase on this matter—we are bringing it all in. And in the opinion of our staff and the members of the committee, there was sufficient matter before that committee that postdated the induction into office of Senator Joseph McCarthy in 1947 that probably it could not be argued that it was not there at all. So that even if there was only one item, it might have some bearing on the argument you have just been making.

Senator STENNIS. Mr. Chairman, I think Mr. Williams has made a very important point here.

He is, in effect, arguing for the exclusion of this testimony on the ground that it does not state a case.

As I understand your argument, it is that this so-called Hayden subcommittee was totally lacking in authority and had no legal status, and therefore could not legally call Senator McCarthy or anyone else before it.

That goes to the question of whether or not it was *facto* or *de jure* or, just what status do you argue for?

Mr. WILLIAMS. My feeling on that is dual, Senator, if I may. Insofar as the Benton resolution was concerned, which is Senate Resolution No. 187, it was never passed upon by the Senate, as the record will show.

It is the first time that there was an expulsion hearing in the Senate without authority from the Senate, which is against all of the precedents of the Senate.

Secondly, substantively thereby the jurisdiction was not vested.

Then they voided themselves in the matter, which was against all precedents of the Senate, by not having charges specified to them for hearing such as this committee has done. This committee has charges before it.

The 83d Congress was careful to document the resolution under which this committee is operating. That was not so in the Benton case.

Thirdly, they denied, refused in that the right to confront and cross-examine the accused.

Senator STENNIS. Pardon me, I remember those points, but your conclusion is, then, that they were without legal authority to proceed?

Mr. WILLIAMS. They were without legal authority to proceed as they started their original investigation, their hearings.

Senator STENNIS. Therefore, it did not actually constitute a legal arm of the Senate?

Mr. WILLIAMS. Not for the purposes of hearing evidence on an expulsion case.

I do not, of course, contest the jurisdiction of the Subcommittee of Privileges and Elections as a valid committee of the Senate, but I say in this mission they were outside the scope of their authority of that, therefore, they did not constitute a valid arm of the Senate.

Senator STENNIS. And could not legally proceed in your case?

Mr. WILLIAMS. Yes.

Senator STENNIS. Thank you.

Senator CASE. Mr. Chairman——

The CHAIRMAN. Senator Case.

Senator CASE. I would again suggest that counsel both for the committee and for Senator McCarthy examine the La Follette and Langer cases to which reference is made on page 71 of the Hemmings report, for there the contention is made that in the case of the old Committee on Privileges and Elections, 5 cases had been presented to them that were unconnected with an election, and in 3 of those, the Smoot, Burton, and Gold cases, the Senate adopted resolutions directing an investigation of the charges, but in the other 2 cases, those of La Follette and Langer, the petitions and protests of private citizens were referred by the presiding officer to the Committee on Privileges and Elections, which then conducted investigations without obtaining resolutions of authorizations from the Senate.

The contention is there made that on the basis of those precedents in the Langer and La Follette cases, the predecessor committee proceeded on its own motion by reference of this material to it.

There is further cited section 134 of the Legislative Reorganization Act. It seems to me that a study of those cases and of the Legislative Reorganization Act would be helpful in arriving at a proper conclusion.

The CHAIRMAN. Senator Case, I will say that as far as the committee staff is concerned, we certainly will direct them to make a full investigation of the matters you call attention to. We want to get all of the precedents, all of the law matters, the arguments before us, so that we can submit them all to the Senate in our report, on both sides of the question, if possible.

Mr. WILLIAMS. I might say, Senator Case, that the Langer case started out, sir, as an exclusion case, and through a series of procedural mechanisms, which would take too long to go into here, it ended up on the floor of the Senate as an expulsion case, but I think for a number of reasons, neither it nor the La Follette case is germane to this particular inquiry.

But I do not want to burden the committee at this time with a legal proposition, and I will cover this in the briefs which I submit to the committee.

The CHAIRMAN. I think you gentlemen will find as you investigate the records of the Senate that the Senate fixes its own rules from time to time, and they are not always the same. At least, that is what I have found in my investigations.

And in the particular inquiry we are in now, I think we are plowing in, many parts of it, virgin soil.

You may proceed with the presentation of evidence.

Mr. CHADWICK. In the fourth—

The CHAIRMAN. In the fourth category.

Mr. CHADWICK. Mr. de Furia, with your permission, will take that.

The CHAIRMAN. I may say also that in the fourth category, some of the material that has been presented heretofore will be considered by the committee as having some bearing on the fourth charge.

Mr. de Furia, proceed.

Mr. DE FURIA. Mr. Chairman, we call to the attention of the committee the 2 specifications, being, 1, the amendment offered by Senator Flanders to Senate Resolution 301, reading as follows:

He has ridiculed his colleagues in the Senate, defaming them publicly and in vulgar and base language (regarding Senator Hendrickson—"A living miracle without brains or guts"; on Flanders—"Senile—I think they should get a man with a net and take him to a good, quiet place.")—

and also the specification based upon the amendment proposed by Senator Morse reading as follows:

(b) Unfairly accused his fellow Senators Gillette, Monroney, Hendrickson, Hayden, and Hennings of improper conduct in carrying out their duties as Senators.

Mr. Chairman, this part of the presentation will be brief. We would like to read into the record certain documentary matters and then call two witnesses, sir, whose testimony will be relatively brief.

The CHAIRMAN. You may proceed.

Mr. DE FURIA. I call to the attention of the committee——

The CHAIRMAN. Just a moment.

Mr. WILLIAMS. May I see the documentary matter that is being introduced, sir?

I think that I should have a copy of this material. I do not have any idea what he is undertaking to offer, and therefore I cannot talk to it.

Mr. DE FURIA. I think that point is well taken, Mr. Chairman. The first part of it is a group of letters which we have already offered and read into evidence.

Mr. WILLIAMS. Thank you, sir.

Mr. DE FURIA. So I take it Mr. Williams' objection does not pertain to that, and we will be glad to show him, sir, immediately what we propose to present to the committee, based on the documentary evidence.

Mr. WILLIAMS. I make that suggestion because I think we may be able to save time if we can stipulate to some of these things.

The CHAIRMAN. Well, it has been difficult for us to make all the contacts necessary in this investigation up to date. As counsel knows, we have had a very short time, and there have been many other activities, and it has been very difficult to get everything prepared as we would have liked to have it.

However, you may run across considerable evidence before we get through that we can't apprise you of in advance, and you probably will have some that you won't tell us about until it is presented before the committee.

Mr. DE FURIA. May I proceed, Mr. Chairman?

The CHAIRMAN. You may proceed.

Mr. DE FURIA. In connection with the specification of Senator Morse, we call the attention of the committee to the letters already admitted in evidence from Senator McCarthy, being a letter from Senator McCarthy to Senator Gillette, exhibit No. 6, December 6, 1951; a letter from Senator McCarthy to Senator Gillette, December 10, 1952, exhibit No. 10; a letter from Senator McCarthy to Senator Hayden, March 21, 1952, being exhibit No. 13; letter from Senator McCarthy to Senator Gillette, May 8, 1952, being exhibit No. 18; letter from Senator McCarthy to Senator Gillette, May 11, 1952, being exhibit No. 21; those exhibit numbers, of course, referring to the appropriate exhibit numbers in the H-H-H report.

Now I would like to inquire, Mr. Chairman, whether Mr. Williams has had an opportunity to examine the copy of certain proposed documentary evidence which we desire to admit from the Army-McCarthy hearings.

Mr. WILLIAMS. I haven't had a chance to examine it, because you haven't given it to me.

The CHAIRMAN. You will have a chance to see it before we get through with the investigation. The committee will have to proceed.

Mr. DE FURIA. It will only take a minute, Mr. Chairman.

The CHAIRMAN. We can't, of course, always give the new testimony in advance. There is no rule requiring it. We like to do it as a matter of courtesy, but in this particular instance we haven't been able to get to it, but we will proceed.

Mr. DE FURIA. Mr. Chairman, I ask that there be read into evidence that portion of the testimony in the Army-McCarthy hearings, volume 25, of the transcript on June 2, 1954, before the Special Subcommittee on Investigations of the Committee on Government Operations, page 4782, reading as follows:

Senator McCARTHY. Mr. Flanders in this statement attempts to raise the question of religious racial bigotry. I think it is a vicious thing. I read his speech. I don't believe he wrote it himself. I think the kindest thing you can say about Ralph is that this may be the result of senility. He tries to inject religious racial bigotry into this fight to expose Communists.

We desire to read into the record, Mr. Chairman, another portion of the same testimony from the Army-McCarthy hearings, being volume 24 of June 1, 1954, page 4546, reading as follows:

Senator McCARTHY. Mr. Chairman, this is a statement by the Senator from Vermont in the nature of a question. I have been very patient with the Senator from Vermont as he has engaged in his diatribes over the past number of weeks. I have felt that he is a nice, kind old gentleman. I wondered whether this has been a result of senility or viciousness.

Mr. Chairman, we desire to read into the record another part of the same testimony, being volume 32, June 11, 1954, page 6321, reading as follows:

Senator McCARTHY. Mr. Chairman, may I say that I have no feud with Mr. Flanders. I have said that I thought it was not the result of viciousness but perhaps senility that he is making these unfounded attacks. I feel, Mr. Chairman, however, that where any Senator has information of value to this committee, that then he should be willing to come before this committee and take the oath and be cross-examined. However, as the Chair says, I am merely a witness here. The Chair is running the committee, so I will abide by any decision made by the Chair obviously.

At this point we desire to call as a witness Bernard Livingstone, sir.

The CHAIRMAN. Will you raise your right hand and be sworn?

Do you solemnly swear that the testimony given in the matter pending before the committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LIVINGSTONE. I do.

TESTIMONY OF BERNARD LYNN LIVINGSTONE

The CHAIRMAN. You may state your name and your address for the purposes of the record.

Mr. LIVINGSTONE. Bernard Lynn Livingstone, 7110 Georgia Street, Chevy Chase, Md.

The CHAIRMAN. You may proceed.

Mr. DE FURIA. You are here under subpoena served upon you at the direction of counsel for the committee; is that correct, sir?

Mr. LIVINGSTONE. That is correct.

Mr. DE FURIA. And what is your business or profession, Mr. Livingstone?

Mr. LIVINGSTONE. I am a reporter for the Associated Press.

Mr. DE FURIA. How long have you been employed by the Associated Press, Mr. Livingstone?

Mr. LIVINGSTONE. I am completing 25 years.

Mr. DE FURIA. Do you know Senator McCarthy?

Mr. LIVINGSTONE. I do.

Mr. DE FURIA. How long have you known Senator McCarthy—known him to recognize and talk to?

Mr. LIVINGSTONE. Casually, upward of 4 or 5 years, I should say.

Mr. DE FURIA. Did you attend a press conference called by Senator McCarthy on June 11, 1954?

Mr. LIVINGSTONE. Well, those were in the course of the Army hearings, I understand. I do not think that I attended a press conference. I did speak to him, however.

Mr. DE FURIA. Did you speak to him alone or in company with other reporters?

Mr. LIVINGSTONE. I spoke to the Senator at the noon recess, approximately 12:30, in company with other reporters.

Mr. DE FURIA. However, it was not formally a press conference—was that the point of your correction?

Mr. LIVINGSTONE. That is the point I am trying to make.

Mr. DE FURIA. Where did you speak to him on that day, Mr. Livingstone?

Mr. LIVINGSTONE. The Senator was at the witness table—this table that I am sitting at, I believe.

Mr. DE FURIA. In this room?

Mr. LIVINGSTONE. In this room. On June 11.

Mr. DE FURIA. You say there were other reporters present?

Mr. LIVINGSTONE. Yes. The occasion was as the hearings broke up for the luncheon recess, a number of reporters, myself included, walked over from the press table to the Senator who was sitting at the witness table, and asked him if he had any comment to make about a speech that Senator Flanders was to deliver on the Senate floor that afternoon, I think it was.

Mr. DE FURIA. Will you give the rest of the conversation and, of course, I am particularly inquiring as to whether Senator McCarthy made any statement or reference or otherwise?

Mr. LIVINGSTONE. Yes, we had received advance copies of the text of the Senator's speech during the morning.

Senator McCARTHY. Which Senator's speech?

Mr. DE FURIA. Which Senator?

Mr. LIVINGSTONE. Senator Flanders. And we had an opportunity to look it over, and I think—I know I did, at least, underline several points which appeared to be interesting to me, and when the recess was called I walked over, stepped over from the press table to the witness table, and handed it to the Senator and asked him if he had any comment he cared to make on the Senator's speech.

A few minutes before Senator Flanders himself had walked into the committee room and served notice on Senator McCarthy that he was to make that speech.

And the Senator looked at it briefly and smiled and said:

I think they should get a man with a net and take him to a good, quiet place.

Mr. DE FURIA. Now, you have quoted the utterance of Senator McCarthy; is that correct, sir?

Mr. LIVINGSTONE. I have, sir.

Mr. DE FURIA. Did you send that in as part of your story to your office?

Mr. LIVINGSTONE. I did. It was very brief. It was sent from downstairs in the press room, a matter of three lines, and the time at 12:46 p. m.

Mr. DE FURIA. Was that story put on the national wires, containing that quote, by the AP?

Mr. LIVINGSTONE. That was, sir. That was placed in our running national trunk story of the day. I don't know, I think the time on the original was about 10 minutes after I had sent it in from the press room here in the Senate Office Building.

The CHAIRMAN. Does counsel for Senator McCarthy wish to cross-examine?

Mr. WILLIAMS. I just have 1 or 2 questions, Mr. Chairman.

The CHAIRMAN. You may proceed.

Mr. WILLIAMS. I want to identify the particular speech, if I may, Mr. Livingstone, that you showed to Senator McCarthy. Was that the speech in which Senator Flanders spoke about civilization coming to an end, in his opinion?

He said, as I recall it, that the civilization through which we were passing was coming to an end; that is what identifies the speech in my mind. Is that the one to which you have reference?

Mr. LIVINGSTONE. I myself don't know what was in the speech, because the speech itself was made on the floor.

Mr. WILLIAMS. Was it the speech in which he said he drew the parallel between Senator McCarthy and Hitler?

Mr. LIVINGSTONE. I believe it was.

Mr. WILLIAMS. Then that is the speech, I take it——

Mr. LIVINGSTONE. That was the speech of June 11.

Mr. WILLIAMS. Yes.

Mr. LIVINGSTONE. That is the one you are talking about.

The CHAIRMAN. Is that the only speech the Senator made that day; do you know?

Mr. WILLIAMS. That is the only one he made that day.

Mr. LIVINGSTONE. That is the only one.

The CHAIRMAN. Does that identify it for you, Mr. Williams?

Mr. LIVINGSTONE. I think so.

Mr. WILLIAMS. I am trying to fix the context of it, sir, because I feel that may have relationship to the remark that was prompted, and in trying to fix the context of it, I have to ask him if it was the speech in which these things were said.

Mr. LIVINGSTONE. Well, this was the speech in which——

The CHAIRMAN. The only thing he has testified to, of course, was the remark that Senator McCarthy is supposed to have made.

Mr. WILLIAMS. Did you particularly, Mr. Livingstone, when you called this speech to Senator McCarthy's attention, direct his attention to any facet of it, or did you just hand him the whole speech and let him read it?

Mr. LIVINGSTONE. I don't think you would say that I attracted his attention to any particular facet. As is customary when you have advanced texts, you underline certain parts that you think are interesting, and I think my copy of the text was underlined here and there throughout the copy of the advance.

Mr. WILLIAMS. So that we can identify this context, did you underline that part of the speech which said that "our civilization has passed through its maturity and is approaching its end?"

Mr. LIVINGSTONE. I could not recall.

Mr. WILLIAMS. Do you remember saying anything to Senator McCarthy, about this speech, about the coming of the end of civilization?

Mr. LIVINGSTONE. I have no recollection of that at all.

Mr. WILLIAMS. Do you remember saying anything to Senator McCarthy concerning the parallel that was drawn between him and Hitler?

Mr. LIVINGSTONE. I have no recollection.

Mr. WILLIAMS. So you are not able to help us with the context?

Mr. LIVINGSTONE. I am not. I merely had the copy and laid it on the table before him, and asked if he had a comment. My only interest was in his comment.

Mr. WILLIAMS. Thank you very much, Mr. Livingstone.

The CHAIRMAN. Are there any questions by members of the committee?

If not, you will be excused, Mr. Livingstone.

Mr. LIVINGSTONE. Thank you, Senator.

The CHAIRMAN. Call your next witness.

Mr. DE FURIA. Mr. Joseph W. Hall, Jr., Mr. Chairman.

The CHAIRMAN. Mr. Hall, please come forward. Raise your right hand.

Do you solemnly swear the testimony you will give in the matter now pending before the committee will be the truth, the whole truth, nothing but the truth, so help you God?

Mr. HALL. I do.

Mr. DE FURIA. Shall I proceed, Mr. Chairman?

The CHAIRMAN. You may proceed.

TESTIMONY OF JOSEPH W. HALL, JR.

Mr. DE FURIA. What is your address, Mr. Hall?

Mr. HALL. Silver Spring, Md.

Mr. DE FURIA. Are you here under subpoena issued at the request of counsel for the committee?

Mr. HALL. Yes, sir; I am.

Mr. DE FURIA. What is your business or profession?

Mr. HALL. I am a reporter for the Associated Press assigned to the Senate staff.

Mr. DE FURIA. How long have you been a reporter, sir?

Mr. HALL. Well, I have been a reporter about 20 years, and I have worked for the AP since 1937.

Mr. DE FURIA. Do you know Senator McCarthy?

Mr. HALL. Yes, sir.

Mr. DE FURIA. How long have you known Senator McCarthy?

Mr. HALL. Well, about 4 years, I would say.

Mr. DE FURIA. Do you know whether you talked to Senator McCarthy on the evening of January 2, 1953, Mr. Hall?

Mr. HALL. Yes, sir, I believe that I did.

Mr. DE FURIA. Was that talk in person or by telephone, sir?

Mr. HALL. By telephone.

Mr. DE FURIA. Where were you at the time?

Mr. HALL. In the Senate Press Galley, Mr. de Furia.

Mr. DE FURIA. So far as you know, where was Senator McCarthy at that time?

Mr. HALL. I don't know, sir.

Mr. DE FURIA. Now, do you have notes of the telephone conversation between Senator McCarthy and you?

Mr. HALL. No, sir, I don't have my notes. But I have a story, or rather a file——

Mr. DE FURIA. Just a minute, please. You have a file?

Mr. HALL. Yes, sir.

Mr. DE FURIA. Do you have any recollection at the present time, independent of your notes or your files, of conversations between the Senator and you that day?

Mr. HALL. Well, based upon the record here, I believe that I talked to Senator McCarthy that night and obtained from him a statement, which we had requested.

Mr. DE FURIA. Thank you. Now, what time was that, Mr. Hall?

Mr. HALL. Well, the story that I wrote is timed 8:51 p. m.

Mr. DE FURIA. All right. Now, will you tell us to the best of your recollection and your knowledge what was the conversation by telephone had between you and Senator McCarthy?

Mr. HALL. Well, by way of background, January 2 was the day the Hennings subcommittee report was issued, and we had unquestionably asked Senator McCarthy to comment, because that is our practice, and according to our files, he had issued a statement, a written statement. Then later in the evening, according to this story that I wrote, which is marked as an insert in the Hennings subcommittee report story, he telephoned a further comment on the report of 5 or 6 paragraphs, and I took, based on the record here—I believe that I took that statement, and I believe that it is accurate. Do you want me to read it?

Mr. DE FURIA. Yes.

Mr. HALL. Just all of the paragraph?

Mr. DE FURIA. That is correct, sir.

Mr. HALL. Well, starting off with a full paragraph:

In his telephone comment, McCarthy said, "This report accuses me either directly or by innuendo and intimation of the most dishonest and improper conduct.

"If it is true, I am unfit to serve in the Senate. If it is false, then the three men who joined in it—namely, Hendrickson, Hennings, and Hayden—are dishonest beyond words.

"If those three men honestly think that all of the four things of which they have accused me, they have a deep, moral obligation tomorrow to move that the Senate does not seat me as a Senator."

Parenthetically, "tomorrow" was January 3, the opening of the 83d Congress.

"If they think the report is true, they will do that. If they know the report is completely false and that it has been issued only for its smear value, then they will not dare to present this case to the Senate.

"This committee has been squandering taxpayers' money on this smear campaign for nearly 18 months. If they feel that they are honest and right, why do they fear presenting their case to the Senate?

"I challenge them to do that. If they do not, they will have proved their complete dishonesty.

"I can understand the actions of the leftwingers in the administration, like Hennings and Hayden. As far as Hendrickson is concerned, I frankly can bear him no ill will.

"Suffice it to say that he is a living miracle in that he is without question the only man in the world who has lived so long with neither brains nor guts."

That ends the statement that I—

Mr. DE FURIA. Was that sent by you, Mr. Hall, to the AP office here in Washington?

Mr. HALL. This statement from which I have been reading is a copy that I wrote and was sent by teletype printer from the Senate Press Gallery into our office downtown.

Mr. DE FURIA. Did it go over the wire?

Mr. HALL. Yes, sir. Do you want the reference on that?

Mr. DE FURIA. It went over the national wires; is that correct?

Mr. HALL. Yes, sir.

Mr. DE FURIA. And that would be to your associated newspapers?

Mr. HALL. Yes, sir. It went over our trunk wire, which is the A wire over the United States, at 9:45 p. m.

Mr. DE FURIA. On what day?

Mr. HALL. On the night of January 2, as an insert giving Senator McCarthy's comment in the story of the Hennings subcommittee report. We had a long story out, I assume, on the Hennings subcommittee report, and this was sent as an insert, giving Senator McCarthy's comment on it.

The CHAIRMAN. Do you wish to cross-examine, Mr. Williams?

Mr. WILLIAMS. I just have 1 or 2 questions to ask, if I may, sir.

The CHAIRMAN. You may proceed.

Mr. WILLIAMS. Mr. Hall, as I understand it when you talked to Senator McCarthy on January 2 of 1953, he was addressing his remarks to this report about which we have had so much conversation this morning, the so-called Hennings-Hayden-Hendrickson report; is that right?

Mr. HALL. Yes, sir; I am sure we had asked him for comment on it.

Mr. WILLIAMS. And in colloquy that you had with him in that telephone conversation, as I understand it, he said to you that if these men believed these things to be true which were stated by innuendo in this report, that it behooved them to stand up on the Senate floor on January 3, 1953, and challenge his being seated; is that correct?

Mr. HALL. That's right. "I challenge them to do that," he said.

Mr. WILLIAMS. That is what he said?

Mr. HALL. Yes, sir.

Mr. WILLIAMS. That's all.

Mr. DE FURIA. Thank you, Mr. Hall.

The CHAIRMAN. Does any member of the committee have a question? If not, then, Mr. Hall, you are excused.

The committee will now be in recess until 2 this afternoon.

(Whereupon, at 12:18 p. m., the committee recessed until 2 p. m., this same day.)

AFTERNOON SESSION

Present: Senators Watkins (chairman), Johnson of Colorado (vice chairman), Stennis, Carlson, Case, and Ervin.

Also present: Senator McCarthy; E. Wallace Chadwick, counsel to the committee; Guy G. de Furia, assistant counsel to the committee; John M. Jex, clerk of the committee; John W. Wellman, staff member; Frank Ginsburg and Ray R. McGuire, members of Senator Watkins' staff on loan to the committee; and Edward Bennett Williams, counsel

to Senator McCarthy, with his associates, Agnes A. Neill and Brent Bozell.

The CHAIRMAN. The committee will be in session. Counsel will now proceed with the presentation of documentary evidence, of which the committee takes judicial notice.

Mr. CHADWICK. Mr. Chairman and members of the committee, this evidence is with respect to point No. 5 of the notice which was heretofore given to the parties as prescribed by the chairman covering incidents relating to Ralph Zwicker, a general officer of the Army of the United States.

That is supported in the statement by quotations from various proposed amendments which have been submitted to this committee for consideration by the Senate itself.

I therefore call attention to the amendments proposed by Mr. Fulbright to the resolution, Senate Resolution 301, in which he said:

Without justification the junior Senator from Wisconsin impugns the loyalty, patriotism, and character of Gen. Ralph Zwicker.

Also, the amendment proposed by Mr. Morse to the resolution as follows:

(c) As chairman of a committee resorted to abusive conduct in his interrogation of Gen. Ralph Zwicker, including a charge that General Zwicker was unfit to wear the uniform—

during the appearance of General Zwicker as a witness before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations on February 18, 1954.

The third is from the amendment proposed by Senator Flanders to the resolution, Senate Resolution 301, viz:

He has attacked the fame and besmirched military heroes of the United States, either as witnesses before his committee or under the cloak of immunity of the Senate floor—General Zwicker, General Marshall.

I ask the committee to take judicial notice that on February 18, 1954, Senator McCarthy was chairman of the Permanent Subcommittee on Investigations of the Committee on Government Operations of the Senate in the 83d Congress, 2d session, and also chairman of the Senate Committee on Government Operations.

I also ask the committee to take judicial notice of the transcript of hearing, and I propose to offer in evidence and read into the record the following testimony given by General Zwicker under examination for the use of the Committee on Government Operations, and appearing as part of the record of hearings before the Permanent Subcommittee on Investigations, of which Senator McCarthy was chairman, held on February 18, 1954, using for the purpose the official transcript certified and sworn to by the report.

The CHAIRMAN. Where was that hearing held?

Mr. CHADWICK. That hearing was held, sir, in executive session in room 110, Federal Building, New York City, N. Y., Senator Joseph R. McCarthy presiding.

The CHAIRMAN. You may proceed.

Mr. CHADWICK. I now begin the reading of the transcript of the subject matter referred to:

The CHAIRMAN. General, would you raise your right hand and be sworn? In this matter now in hearing before the committee, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF BRIG. GEN. RALPH W. ZWICKER, UNITED STATES ARMY; ACCOMPANIED BY CAPT. W. J. WOODWARD, MEDICAL CORPS, UNITED STATES ARMY

General ZWICKER. I do.

Before we start, there is no need for a medical officer to be in here.

The CHAIRMAN. That is O. K.

Mr. COHN. A man who is his own lawyer has a fool for a client, and it is the same thing with a man who tries to be his own doctor.

General, could we have your full name?

General ZWICKER. Ralph W. Zwickler.

Mr. COHN. General, to see if we can save a little time here, isn't the situation this—by the way, you have been commanding officer at Kilmer since when?

General ZWICKER. Since the middle of July last year.

Mr. COHN. Has the Peress case come to your attention since that time? I am not asking questions about it.

General ZWICKER. Yes.

Mr. COHN. It has come to your attention, and you have a familiarity with that case?

General ZWICKER. Yes.

Mr. COHN. Now, general, would you like to be able to tell us exactly what happened in that case, and what steps you took and others took down at Kilmer to take action against Peress a long time before action was finally forced by the committee?

General ZWICKER. That is a toughie.

Mr. COHN. All I am asking you now is if you could, if you were at liberty to do so, would you like to be in a position to tell us that story?

General ZWICKER. Well, may I say that if I were in a position to do so, I would be perfectly glad to give the committee any information that they desired.

Mr. COHN. You certainly feel that that information would not reflect unfavorably on you; is that correct?

General ZWICKER. Definitely not.

Mr. COHN. And would not reflect unfavorably on a number of other people at Kilmer and the First Army?

General ZWICKER. Definitely not.

The CHAIRMAN. It would reflect unfavorably upon some of them, of course?

General ZWICKER. That I can't answer, sir. I don't know.

The CHAIRMAN. Well, you know that somebody has kept this man on, knowing he was a Communist, do you not?

General ZWICKER. No, sir.

The CHAIRMAN. You know that somebody has kept him on knowing that he has refused to tell whether he was a Communist, do you not?

General ZWICKER. I am afraid that would come under the category of the Executive order, Mr. Chairman.

The CHAIRMAN. What?

General ZWICKER. I am afraid an answer to that question would come under the category of the Presidential Executive order.

The CHAIRMAN. You will be ordered to answer the question.

General ZWICKER. Would you repeat the question, please?

Mr. COHN. Read it to the general.

(The question referred to was read by the reporter.)

General ZWICKER. I respectfully decline to answer, Mr. Chairman, on the grounds of the directive, Presidential directive, which, in my interpretation, will not permit me to answer that question.

The CHAIRMAN. Let the record show he was ordered—
followed by stars to show the sentence was not completed.

The CHAIRMAN. You know that somebody signed or authorized an honorable discharge for this man, knowing that he was a fifth amendment Communist; do you not?

General ZWICKER. I know that an honorable discharge was signed for the man.

The CHAIRMAN. The day the honorable discharge was signed, were you aware of the fact that he had appeared before our committee?

General ZWICKER. I was.

The CHAIRMAN. And had refused to answer certain questions?

General ZWICKER. No, sir; not specifically on answering any questions. I knew that he had appeared before your committee.

The CHAIRMAN. Didn't you read the news?

General ZWICKER. I read the news releases.

The CHAIRMAN. And the news releases were to the effect that he had refused to tell whether he was a Communist, and that there was evidence that he had attended Communist leadership schools. It was on all the wire service stores; was it not? You knew generally what he was here for; did you not?

General ZWICKER. Yes, indeed.

The CHAIRMAN. And you knew generally that he had refused to tell whether he was a Communist; didn't you?

General ZWICKER. I don't recall whether he refused to tell whether he was a Communist.

The CHAIRMAN. Are you the commanding officer there?

General ZWICKER. I am the commanding general.

The CHAIRMAN. When an officer appears before a committee and refuses to answer, would you not read the story rather carefully?

General ZWICKER. I read the press releases.

The CHAIRMAN. Then, General, you knew, did you not, that he appeared before the committee and refused, on the grounds of the fifth amendment, to tell about all of his Communist activities? You knew that, didn't you?

General ZWICKER. I knew everything that was in the press.

The CHAIRMAN. Don't be coy with me, General.

General ZWICKER. I am not being coy, sir.

The CHAIRMAN. Did you have that general picture?

General ZWICKER. I believe I remember reading in the paper that he had taken refuge in the fifth amendment to avoid answering questions before the committee.

The CHAIRMAN. About communism?

General ZWICKER. I am not too certain about that.

The CHAIRMAN. Do you mean that you did not have enough interest in the case, General, the case of this major who was in your command to get some idea of what questions he had refused to answer? Is that correct?

General ZWICKER. I think that is not putting it quite right, Mr. Chairman.

The CHAIRMAN. You put it right, then.

General ZWICKER. I have great interest in all of the officers of my command, with whatever they do.

The CHAIRMAN. Let's stick to fifth-amendment Communists, now. Let's stick to him. You told us you read the press releases.

General ZWICKER. I did.

The CHAIRMAN. But now you indicate that you did not know that he refused to tell about his Communist activities. Is that correct?

General ZWICKER. I know that he refused to answer questions for the committee.

The CHAIRMAN. Did you know that he refused to answer questions about his Communist activities?

General ZWICKER. Specifically, I don't believe so.

The CHAIRMAN. Did you have any idea?

General ZWICKER. Of course I had an idea.

The CHAIRMAN. What do you think he was called down here for?

General ZWICKER. For that specific purpose.

The CHAIRMAN. Then you knew that those were the questions he was asked, did you not? General, let's try and be truthful. I am going to keep you here as long as you keep hedging and hemming.

General ZWICKER. I am not hedging.

The CHAIRMAN. Or hawing.

General ZWICKER. I am not hawing, and I don't like to have anyone impugn my honesty, which you just about did.

The CHAIRMAN. Either your honesty or your intelligence; I can't help impugning one or the other, when you tell us that a major in your command who was known to you to have been before a Senate committee, and of whom you read the press releases very carefully—to now have you sit here and tell us that you did not know whether he refused to answer questions about Communist activities. I had seen all the press releases, and they all dealt with that. So when you do that, General, if you will pardon me, I cannot help but question either your honesty or your intelligence, one or the other. I want to be frank with you on that.

Now, is it your testimony now that at the time you read the stories about Major Peress, that you did not know that he had refused to answer questions before this committee about his Communist activities?

General ZWICKER. I am sure I had that impression.

The CHAIRMAN. Were you aware that the major was being given an honorable discharge * * *.

The CHAIRMAN. Did you also read the stories about my letter to Secretary of the Army Stevens in which I requested or, rather, suggested that this man be court-martialed, and that anyone that protected him or covered up for him be court-martialed?

General ZWICKER. Yes, sir.

The CHAIRMAN. That appeared in the papers on Sunday and Monday; right?

General ZWICKER. I don't recall the exact date.

The CHAIRMAN. At least, it appeared before he got his honorable discharge?

General ZWICKER. I don't know that that was true, either, sir.

The CHAIRMAN. In any event, you saw it in a current paper; did you?

General ZWICKER. I did.

The CHAIRMAN. You didn't see the story later. So that at the time he was discharged, were you then aware of the fact that I had suggested a court-martial for him and for whoever got him special consideration?

General ZWICKER. If the time jibes, I was.

The CHAIRMAN. Were you aware that he was being given a discharge on February 2? In other words, the day he was discharged; were you aware of it?

General ZWICKER. Yes; yes, sir.

The CHAIRMAN. Who ordered his discharge?

General ZWICKER. The Department of the Army.

The CHAIRMAN. Who in the Department?

General ZWICKER. That I can't answer.

Mr. COHN. That isn't a security matter?

General ZWICKER. No. I don't know. Excuse me.

Mr. COHN. Who did you talk to? You talked to somebody?

General ZWICKER. No, I did not.

Mr. COHN. How did you know he should be discharged?

General ZWICKER. You also have a copy of this. I don't know why you asked me for it. This is the order under which he was discharged, a copy of that order.

The CHAIRMAN. Just a minute.

You are referring to an order of January 19.

General ZWICKER. I am not sure, sir. Just a moment.

The CHAIRMAN. January 18. Will you tell me whether or not you were at all concerned about the fact that this man was getting an honorable discharge after the chairman of the Senate Investigating Committee had suggested to the Department of the Army that he be court-martialed? Did that give you any concern?

General ZWICKER. It may have concerned me, but it could not have changed anything that was done in carrying out this order.

The CHAIRMAN. Did you take any steps to have him retained until the Secretary of the Army could decide whether he should be court-martialed?

General ZWICKER. No, sir.

The CHAIRMAN. Did it occur to you that you should?

General ZWICKER. No, sir.

The CHAIRMAN. Could you have taken such steps?

General ZWICKER. No, sir.

The CHAIRMAN. In other words, there is nothing you could have done; is that your statement?

General ZWICKER. That is my opinion.

Mr. RAINVILLE. May I interrupt a minute? Doesn't that order specifically state that is subject to your check as to whether he is in good health and can be discharged?

General ZWICKER. May I read it?

Mr. RAINVILLE. I read the order. It is in there.

General ZWICKER. Paragraph 5 of this order states:

"Officer will not be separated prior to determination that he is physically qualified for separation by your headquarters."

Mr. RAINVILLE. That is a decision that you must make?

General ZWICKER. Not me personally. My medical officers.

Mr. RAINVILLE. But he would report to you. He would not make the decision without giving you, the commanding general, the order for final verification?

General ZWICKER. It would not be necessary. If something were found wrong physically with the man, he would be retained.

Mr. RAINVILLE. He would report to you?

General ZWICKER. No. He would be retained.

Mr. RAINVILLE. It would be automatic, and you would not have to sign anything?

General ZWICKER. I would not personally, no. The medical officer would make such a report.

Mr. RAINVILLE. But there was somebody in your outfit who could say, "This man can go out or can't go out," and that was the doctor?

General ZWICKER. He could not keep him in if he were physically qualified for separation.

Mr. RAINVILLE. But he could say he couldn't go out, so that there was discretion within that 90-day period.

The CHAIRMAN. Let me ask this question: If this man, after the order came up, after the order of the 18th came up, prior to his getting an honorable discharge, were guilty of some crime—let us say that he held up a bank or stole an automobile—and you heard of that the day before—let's say you heard of it the same day that you heard of my letter—could you then have taken steps to prevent his discharge, or would he have automatically been discharged?

General ZWICKER. I would have definitely taken steps to prevent discharge.

The CHAIRMAN. In other words, if you found that he was guilty of improper conduct, conduct unbecoming an officer, we will say, then you would not have allowed the honorable discharge to go through; would you?

General ZWICKER. If it were outside the directive of this order?

The CHAIRMAN. Well, yes; let's say it were outside the directive.

General ZWICKER. Then I certainly would never have discharged him until that part of the case—

The CHAIRMAN. Let us say he went out and stole \$50 the night before.

General ZWICKER. He wouldn't have been discharged.

The CHAIRMAN. Do you think stealing \$50 is more serious than being a traitor to the country as part of the Communist conspiracy?

General ZWICKER. That, sir, was not my decision.

The CHAIRMAN. You said if you learned that he stole \$50, you would have prevented his discharge. You did learn something much more serious than that. You learned that he had refused to tell whether he was a Communist. You learned that the chairman of a Senate committee suggested that he be court-martialed. And you say if he had stolen \$50 he would not have gotten the honorable discharge. But merely being a part of the Communist conspiracy, and the chairman of the committee asking that he be court-martialed, would not give you grounds for holding up his discharge. Is that correct?

General ZWICKER. Under the terms of this letter, that is correct, Mr. Chairman.

The CHAIRMAN. That letter says nothing about stealing \$50, and it does not say anything about being a Communist. It does not say anything about his appearance before our committee. He appeared before our committee after that order was made out.

Do you think you sound a bit ridiculous, General, when you say that for \$50, you would prevent his being discharged, but for being a part of the conspiracy to destroy this country you could not prevent his discharge?

General ZWICKER. I did not say that, sir.

The CHAIRMAN. Let's go over that. You did say if you found out he stole \$50 the night before, he would not have gotten an honorable discharge the next morning?

General ZWICKER. That is correct.

The CHAIRMAN. You did learn, did you not, from the newspaper reports, that this man was part of the Communist conspiracy, or at least that there was strong evidence that he was? Didn't you think that was more serious than the theft of \$50?

General ZWICKER. He has never been tried for that, sir, and there was evidence, Mr. Chairman—

The CHAIRMAN. Don't you give me that doubletalk. The \$50 case, that he had stolen the night before, he has not been tried for that.

General ZWICKER. That is correct. He didn't steal it yet.

The CHAIRMAN. Would you wait until he was tried for stealing the \$50 before you prevented his honorable discharge?

General ZWICKER. Either tried or exonerated.

The CHAIRMAN. You would hold up the discharge until he was tried or exonerated?

General ZWICKER. For stealing the \$50; yes.

The CHAIRMAN. But if you heard that this man was a traitor—in other words, instead of hearing that he had stolen \$50 from the corner store, let's say you heard that he was a traitor, he belonged to the Communist conspiracy; that a Senate committee had the sworn testimony to that effect. Then would you hold up his discharge until he was either exonerated or tried?

General ZWICKER. I am not going to answer that question, I don't believe, the way you want it, sir.

The CHAIRMAN. I just want you to tell me the truth.

General ZWICKER. Of all of the evidence or anything that had been presented to me as commanding general of Camp Kilmer, I had no authority to retain him in the service.

Mr. WILLIAMS. It says "on" here—"on all of the evidence." I think it changes the meaning.

Mr. CHADWICK. I will read it as it is here—if it involves a correction I am sorry I said it wrong.

On all of the evidence or anything that had been presented to me as commanding general of Camp Kilmer, I had no authority to retain him in the service.

The CHAIRMAN. You say that if you had heard that he had stolen \$50, then you could order him retained. But when you heard that he was part of the Communist conspiracy, that subsequent to the time the orders were issued a Senate committee took the evidence under oath that he was part of the conspiracy, you say that would not allow you to hold up his discharge?

General ZWICKER. I was never officially informed by anyone that he was part of the Communist conspiracy, Mr. Senator.

The CHAIRMAN. Well, let's see now. You say that you were never officially informed?

General ZWICKER. No.

The CHAIRMAN. If you heard that he had stolen \$50 from someone down the street, if you did not hear it officially, then could you hold up his discharge? Or is there some peculiar way you must hear it?

General ZWICKER. I believe so, yes, sir, until I was satisfied that he had or hadn't, one way or the other.

The CHAIRMAN. You would not need any official notification so far as the 50 bucks is concerned?

General ZWICKER. Yes.

The CHAIRMAN. But you say insofar as the Communist conspiracy is concerned, you need an official notification?

General ZWICKER. Yes, sir; because I was acting on an official order, having precedence over that.

The CHAIRMAN. How about the \$50? If one of your men came in a half hour before he got his honorable discharge and said, "General, I just heard downtown from a police officer that this man broke into a store last night and stole \$50," you would not give him an honorable discharge until you had checked the case and found out whether that was true or not; would you?

General ZWICKER. I would expect the authorities from downtown to inform me of that or, let's say, someone in a position to suspect that he did it.

The CHAIRMAN. Let's say one of the trusted privates in your command came in to you and said, "General, I was just downtown, and I have evidence that Major Peress broke into a store and stole \$50." You wouldn't discharge him until you had checked the facts, seen whether or not the private was telling the truth, and seen whether or not he had stolen the \$50?

General ZWICKER. No; I don't believe I would. I would make a check, certainly, to check the story.

The CHAIRMAN. Would you tell us, General, why \$50 is so much more important to you than being part of the conspiracy to destroy a Nation which you are sworn to defend?

General ZWICKER. Mr. Chairman, it is not, and you know that as well as I do.

The CHAIRMAN. I certainly do. That is why I cannot understand you sitting there, General, a general in the Army, and telling me that you could not, would not, hold up his discharge having received information—

General ZWICKER. I could not hold up his discharge.

The CHAIRMAN. Why could you not do it in the case of an allegation of membership in a Communist conspiracy, where you could if you merely heard some private's word that he had stolen \$50?

General ZWICKER. Because, Mr. Senator, any information that appeared in the press or any releases was well known to me and well known to plenty of other people long prior to the time that you ever called this man for investigation, and there were no facts or no allegations, nothing presented from the time that he appeared before your first investigation that was not apparent prior to that time.

The CHAIRMAN. In other words, as you sat here this morning and listened to the testimony you heard nothing new?

Mr. COHN. Nothing substantially new?

General ZWICKER. I don't believe so.

The CHAIRMAN. So that all of these facts were known at the time he was ordered to receive an honorable discharge?

General ZWICKER. I believe they are all on record; yes, sir.

The CHAIRMAN. Do you think, General, that anyone who is responsible for giving an honorable discharge to a man who has been named under oath as a member of the Communist conspiracy should himself be removed from the military?

General ZWICKER. You are speaking of generalities now, and not on specifics—is that right, sir, not mentioning about any one particular person?

The CHAIRMAN. That is right.

General ZWICKER. I have no brief for that kind of person, and if there exists or has existed something in the system that permits that, I say that that is wrong.

The CHAIRMAN. I am not talking about the system. I am asking you this question, General, a very simple question: Let's assume that John Jones, who is a major in the United States Army—

General ZWICKER. A what, sir?

The CHAIRMAN. Let's assume that John Jones is a major in the United States Army. Let's assume that there is sworn testimony to the effect that he is part of the Communist conspiracy, has attended Communist leadership schools. Let's assume that Maj. John Jones is under oath before a committee and says, "I cannot tell you the truth about these charges because, if I did, I fear that might tend to incriminate me." Then let's say that General Smith was responsible for this man receiving an honorable discharge, knowing these facts. Do you think that General Smith should be removed from the military, or do you think he should be kept on in it?

General ZWICKER. He should be by all means kept if he were acting under competent orders to separate that man.

The CHAIRMAN. Let us say he is the man who signed the orders. Let us say General Smith is the man who originated the order.

General ZWICKER. Originated the order directing his separation?

The CHAIRMAN. Directing his honorable discharge.

General ZWICKER. Well, that is pretty hypothetical.

The CHAIRMAN. It is pretty real, General.

General ZWICKER. Sir, on one point, yes. I mean, on an individual, yes. But you know that there are thousands and thousands of people being separated daily from our Army.

The CHAIRMAN. General, you understand my question—

General ZWICKER. Maybe not.

The CHAIRMAN. And you are going to answer it.

General ZWICKER. Repeat it.

The CHAIRMAN. The reporter will repeat it.

(The question referred to was read by the reporter.)

General ZWICKER. That is not a question for me to decide, Senator.

The CHAIRMAN. You are ordered to answer it, General. You are an employee of the people.

General ZWICKER. Yes, sir.

The CHAIRMAN. You have a rather important job. I want to know how you feel about getting rid of Communists.

General ZWICKER. I am all for it.

The CHAIRMAN. All right. You will answer that question, unless you take the fifth amendment. I do not care how long we stay here, you are going to answer it.

General ZWICKER. Do you mean how I feel toward Communists?

The CHAIRMAN. I mean exactly what I asked you, General; nothing else. And anyone with the brains of a 5-year-old child can understand that question.

The reporter will read it to you as often as you need to hear it so that you can answer it, and then you will answer it.

General ZWICKER. Start it over, please.

(The question was reread by the reporter.)

General ZWICKER. I do not think he should be removed from the military.

The CHAIRMAN. Then, General, you should be removed from any command. Any man who has been given the honor of being promoted to general and who says, "I will protect another general who protected Communists," is not fit to wear that uniform, General. I think it is a tremendous disgrace to the Army to

have this sort of thing given to the public. I intend to give it to them. I have a duty to do that. I intend to repeat to the press exactly what you said. So you know that. You will be back here, General.

Do you know who initiated the order for the honorable discharge of this major?

General ZWICKER. As a person, sir?

The CHAIRMAN. Yes.

General ZWICKER. No; I do not.

The CHAIRMAN. Have you tried to find out?

General ZWICKER. No; I have not.

The CHAIRMAN. Have you discussed that matter with Mr. Adams?

General ZWICKER. As a person, no, sir.

The CHAIRMAN. How did you discuss it with him other than as a person?

General ZWICKER. I mean as an individual. This is a Department of the Army order.

The CHAIRMAN. Have you tried to find out who is responsible?

General ZWICKER. Who signed this order?

The CHAIRMAN. Who was responsible for the order?

General ZWICKER. No, sir; I have not.

The CHAIRMAN. Are you curious?

General ZWICKER. Frankly, no.

The CHAIRMAN. You were fully satisfied then, when you got the order to give an honorable discharge to this Communist major?

General ZWICKER. I am sorry, sir?

The CHAIRMAN. Read the question.

(The question was read by the reporter.)

General ZWICKER. Yes, sir; I was.

Mr. COHN. General, I have just 1 or 2 questions.

The CHAIRMAN. Let me ask one question.

In other words, you think it is proper to give an honorable discharge to a man known to be a Communist?

General ZWICKER. No; I do not.

The CHAIRMAN. Why do you think it is proper in this case?

General ZWICKER. Because I was ordered to do so.

The CHAIRMAN. In other words, anything that you are ordered to do, you think is proper?

General ZWICKER. That is correct. Anything that I am ordered to do by higher authority, I must accept.

The CHAIRMAN. Do you think that the higher authority would be guilty of improper conduct?

General ZWICKER. It is conceivable.

The CHAIRMAN. Do you think they are guilty of improper conduct here?

General ZWICKER. I am not their judge, sir.

The CHAIRMAN. Do you think to order the honorable discharge for a Communist major was improper conduct?

General ZWICKER. I think it was improper procedure, sir.

The CHAIRMAN. Do you think it is improper?

Mr. COHN. General, I just want to ask you this: Peress was discharged on February 2, which was a Tuesday.

General ZWICKER. That is right.

Mr. COHN. He appeared before the committee on Saturday. On Monday or Tuesday, did you speak to anybody in the Department of the Army in Washington, telephonically, about the Peress case? On Monday or Tuesday?

General ZWICKER. Let me think a minute.

It is possible that I called First Army to inform them that Peress had changed his mind and desired a discharge as soon as possible.

Mr. COHN. Who would you have told in the First Army? Who would you call? G-2, or General Burrese?

General ZWICKER. I don't think in that case I would call General Burrese.

Mr. COHN. General Seabree?

General ZWICKER. No. It would have been G-1, or Deputy Chief of Staff.

Mr. COHN. Who is that?

General ZWICKER. General Gurney.

Mr. COHN. You don't remember which one it was?

General ZWICKER. I don't recall that I called.

Mr. COHN. Did you talk to Mr. Adams in those days?

General ZWICKER. No, sir.

Mr. COHN. Did you ever talk to Mr. Adams before yesterday? You recall whether or not you spoke to him.

General ZWICKER. I know Mr. Adams, yes. There was one call, but I think that came from a member of your committee, from Washington, requesting that this man appear before your committee first.

The CHAIRMAN. You understand the question. Did you talk to Mr. Adams before yesterday?

General ZWICKER. I don't recall. I don't believe so, sir.

The CHAIRMAN. Did you talk to anyone in Washington?

General ZWICKER. No, sir, about this case.

The CHAIRMAN. Within the week preceding his discharge?

General ZWICKER. No, sir.

The CHAIRMAN. Did you at any time ever object to this man being honorably discharged?

General ZWICKER. I respectfully decline to answer that, sir.

The CHAIRMAN. You will be ordered to answer it.

General ZWICKER. That is on the grounds of this Executive order.

The CHAIRMAN. You are ordered to answer. That is a personnel matter.

General ZWICKER. I shall still respectfully decline to answer it.

The CHAIRMAN. Did you ever take any steps which would have aided him in continuing in the military after you knew that he was a Communist?

General ZWICKER. That would have aided him in continuing, sir?

The CHAIRMAN. Yes.

General ZWICKER. No.

The CHAIRMAN. Did you ever do anything instrumental in his obtaining his promotion after knowing that he was a fifth-amendment case?

General ZWICKER. No, sir.

The CHAIRMAN. Did you ever object to his being promoted?

General ZWICKER. I had no opportunity to, sir.

The CHAIRMAN. Did you ever enter any objection to the promotion of this man under your command?

General ZWICKER. I had no opportunity to do that.

The CHAIRMAN. You say you did not; is that correct?

General ZWICKER. That is correct.

The CHAIRMAN. And you refuse to tell us whether you objected to his obtaining an honorable discharge?

General ZWICKER. I don't believe that is quite the way the question was phrased before.

The CHAIRMAN. Well, answer it again, then.

General ZWICKER. I respectfully request that I not answer that question.

The CHAIRMAN. You will be ordered to answer.

General ZWICKER. Under the same authority as cited before, I cannot answer it.

Mr. COHN. Did anybody on your staff, General—Colonel Brown or anyone in G-2—communicate with the Department of the Army on February 1 or February 2? In other words, in connection with the discharge?

General ZWICKER. I don't know, but I don't believe so.

Mr. COHN. To the best of your knowledge, no?

General ZWICKER. No.

Mr. COHN. In other words, on January 18, 1954, you received a direction from the Secretary, signed by the Adjutant General, I assume that is General Bergin, telling you to give this man an honorable discharge from the Army at any practicable date, depending on his desire, but in no event later than 90 days; that that was the order, and you had nothing from the order to change that order in view of his testimony before the committee; and therefore, when the man came in and wanted an honorable discharge, you felt under this order compelled to give it to him as a decision that had been made by the Adjutant General. Is that correct?

General ZWICKER. That is correct.

Mr. COHN. And you received no additional words from the Adjutant General on February 1 or February 2, and before you gave the discharge you did not call and say, "In view of all of this, and his testimony on Saturday, and Senator McCarthy's request for a court-martial, this man is in here now, and is that all right?" You never made any such call?

General ZWICKER. No; I did not.

Mr. RAINVILLE. General. I think at one place there you said he changed his request to an immediate discharge?

General ZWICKER. That is correct.

Mr. RAINVILLE. Then he had previously objected to the discharge or at least he wanted the full 90 days?

General ZWICKER. No, sir. He requested to be discharged on the 31st of March, I think, which would make it 60 days from receipt, rather than the full 90. He did not ask for the full 90, but he asked for what amounted to 60 days, 2 months.

Mr. RAINVILLE. Then he came in as soon as he testified, and asked for an immediate discharge and it was processed routinely?

General ZWICKER. That is correct.

Mr. RAINVILLE. But you never thought it necessary after he appeared before the committee or when he made that request to discuss his appearance before the committee with him?

General ZWICKER. I am sorry.

Mr. RAINVILLE. My question is this: After he appeared before the committee and he was still a member of your command, even though he was on separation, you didn't ask him to come in and report what he testified to?

General ZWICKER. No, sir.

Mr. RAINVILLE. And you didn't think it was necessary when he came in and asked for an immediate discharge instead of 60 days to ask him what transpired so as to get some kind of an idea as to why he wanted it immediately, or why he is in a rush to get out now instead of taking the 60 days that he wanted before that?

General ZWICKER. That was beyond my prerogative. I did not.

Mr. RAINVILLE. As an officer of your command, certainly what we usually call the old man's privilege there, prerogative, they may ask that sort of question, and so forth, so long as he is one of your command. But you didn't do it?

General ZWICKER. No. He told me he wanted to be released, and I said, "All right."

Mr. JONES. General did the counsel of the Army advise you not to discuss the Peress case?

General ZWICKER. He did not.

Mr. JONES. He did not advise you?

General ZWICKER. No, sir.

The CHAIRMAN. Who did advise you?

General ZWICKER. No one.

The CHAIRMAN. What did you and Mr. Adams talk about yesterday?

General ZWICKER. Mr. Adams and I talked about the various procedures of prior meetings such as this. He tried to indicate what I might expect.

Mr. JONES. Did Mr. Adams advise anyone not to discuss the Peress case to this committee?

General ZWICKER. I am sorry. He did not advise me.

Mr. JONES. I mean to your knowledge, did he advise any other person?

General ZWICKER. To my knowledge he did not.

Mr. JONES. General, what is your considered opinion of this order here forbidding you to assist this committee in exposing the Communist conspiracy in the Army?

General ZWICKER. Sir, I cannot answer that, because it is signed by the President. The President says don't do it and therefore I don't.

Mr. JONES. What is your considered opinion of that order? You see now, here is a perfectly good example of a Communist being promoted right in the ranks, all because of this Executive order here, in many respects, where we couldn't get at these things earlier. What is your considered opinion of an order of that nature?

General ZWICKER. I won't answer that, because I will not criticize my Commander in Chief.

The CHAIRMAN. General, you will return for a public session at 10:30 Tuesday morning.

General ZWICKER. This coming Tuesday?

The CHAIRMAN. Yes.

General ZWICKER. Here?

The CHAIRMAN. Yes.

General ZWICKER. At what time?

The CHAIRMAN. 10:30. In the meantime, in accordance with the order which you claim forbids you the right to discuss this case, you will contact the proper authority who can give you permission to tell the committee the truth about the case before you appear Tuesday, and request permission to be allowed to tell us the truth about the—

General ZWICKER. Sir, that is not my prerogative, either.

The CHAIRMAN. You are ordered to do it.

General ZWICKER. I am sorry, sir, I will not do that.

The CHAIRMAN. All right.

General ZWICKER. If you care to have me, I will cite certain other portions of this.

The CHAIRMAN. You need cite nothing. You may step down.

(Whereupon, at 5:15 p. m., the committee was recessed, subject to the call of the Chair.)

Senator CASE. Mr. Chairman——

The CHAIRMAN. Senator Case.

Senator CASE (continuing). In view of the fact that one of the amendments referred to the committee was the one by Senator Bush, which proposes certain rules governing committee conduct, I think we ought to have some identification of Mr. Rainville and Mr. Jones, for the purposes of the record. To my knowledge they were not members of the committee, and I do not know who they were, and for the record I think they should be identified as to who they were. They apparently participated in the interrogation.

The CHAIRMAN. We will have counsel make that identification, if it is possible, from the record.

Mr. CHADWICK. I read, Mr. Chairman, from the covering page of the transcript as follows:

Present: Senator Joseph R. McCarthy, Republican, Wisconsin; present also: Roy M. Cohn, chief counsel; Daniel G. Buckley, assistant counsel; Harold Rainville, administrative assistant to Senator Dirksen; Robert Jones, administrative assistant to Senator Potter; and James N. Juliana, investigator.

Is that the matter that you had in mind, Senator?

Senator CASE. Yes.

Mr. WILLIAMS. I might suggest, if I may, sir——

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS (continuing). Since that stipulation has been offered in the record, perhaps it would be well to stipulate that Mr. Rainville and Mr. Jones were attending in lieu of the respective Senators for whom they worked, who were otherwise engaged on that occasion, which is the fact.

Mr. CHADWICK. Mr. Williams, it is my recollection from other material that that is true, but I do not have that information here. I believe it to be true.

The CHAIRMAN. Well, that would be the probability.

The Chair will rule that the committee will take judicial notice of the record which has just been produced.

Have you other matters there of which the committee can take judicial notice, Mr. Chadwick?

Mr. CHADWICK. I have here a certification from the Department of the Army, Office of the Adjutant General, Washington, D. C., in the following matter——

in reply refer to AGPI-OD-S 201 Zwicker, Ralph W., O 16 878 (24 Aug 54)——

and is as follows—I may say, sir, before I commence to read, for Mr. Williams' benefit, that on the third page appears the following language:

By authority of the Secretary of the Army: John A. Klein, major general, USA, The Adjutant General——

and it bears the seal.

The CHAIRMAN. What is the material contained in that statement?

Mr. CHADWICK. It is the official record in the custody of the Office of the Adjutant General, showing the military record of Ralph W. Zwicker.

The CHAIRMAN. The committee will take judicial notice of that, and it will be placed in the record.

Mr. CHADWICK. Reading from the word "Certificate" as follows:

I certify the official records in the custody of the Office of The Adjutant General show that Ralph Wise Zwicker, O 16 878, was born in Stoughton, Wisconsin, on 17 April 1903. He attended the University of Wisconsin for approximately two years. He was appointed cadet to the United States Military Academy on 2 July 1923. Upon graduation on 14 June 1927 he was appointed a Second Lieutenant of Infantry, Regular Army, accepted 14 June 1927; promoted to First Lieutenant, Regular Army, 10 July 1933; promoted to Captain, Regular Army, 14 June 1937; appointed Major, Army of the United States, 4 February 1941, accepted 6 February 1941; promoted to Lieutenant Colonel, Army of the United States, 23 June 1942; promoted to Major, Regular Army, 14 June 1944; promoted to Colonel, Army of the United States, 16 June 1944; promoted to Lieutenant Colonel, Regular Army, 15 July 1948; promoted to Colonel, Regular Army, 23 March 1951; appointed Brigadier General, Army of the United States, 16 March 1953.

He graduated from the United States Military Academy, 1927; Infantry School, Company Officers' Course, 1933; Command and General Staff School, 1942; Naval War College, 1945; National War College, 1947; and was awarded the educational equivalent to the Armed Forces Staff College, 1947.

General Zwicker was awarded the Silver Star for gallantry in action, 6 June 1944; the Legion of Merit for exceptionally meritorious conduct in the performance of outstanding services during the periods from 28 July 1944, to 18 August 1944, and from 30 August 1944, to 15 October 1944; Oak Leaf Cluster to the Legion of Merit for the period from 15 October 1944, to May 1945; Bronze Star Medal with two Oak Leaf Clusters; Commendation Ribbon with Metal Pendant. Extracts of the citations for these awards are attached.

His combat record began in April 1944 when he went to Europe as Commanding Officer of the 38th Infantry Regiment; he served in this capacity until May 1945; his commander said of him during this period: "Mentally energetic, self-reliant and considerate. He has an exceptionally pleasing personality, mixes well and inspires confidence." From July 1945, to December 1945 he attended the Naval War College, graduating with a rating of "Superior." From January 1946 to August 1946 he was Assistant to the Assistant Chief of Staff, G-3, Army Ground Forces, Washington, D. C. His superior officer said of him: "exceptionally able and experienced, cooperative, professionally well qualified for any staff or command assignment. Possesses good judgment and commonsense to a marked degree." From September 1946 to June 1947 he attended the National War College, graduating with a rating of "Superior." The Commandant of the College said of him: "He has shown special aptitude for duty with highest combined or joint staffs." From June 1947 to April 1949 he was Chief of Organization Branch, Organization-Requirements Group, Organization and Training Division, General Staff, United States Army, Department of the Army, Washington, D. C. His superior officer said of him: "An officer of the highest type in character and ability. Seeks responsibility, demonstrates initiative and force in his work." From April 1949 to July 1949 he was Deputy to the Special Assistant to the Chief of Staff, U. S. Army for Civilian Component Affairs, in the Office Chief of Staff, Washington, D. C. His superior officer said of him: "A superior, high type officer with a great deal of initiative and ability. High sense of duty. Reasons to logical conclusions and puts them into effect. Has capacity for leadership and high command and is general officer material."

From August 1949 to August 1950 he was Deputy Director, Operations and Training Division, Headquarters, European Command. From August 1950 to May 1952 he was Commanding Officer, 18th Infantry Regiment, Europe. His commander said of him: "An officer with extremely high standards. Has a fine background of combat and staff experience. I consider him well qualified to be a general officer." From June 1952 to January 1953 he was a member of Military Faculty Committee No. 1, National War College. His superior officer said of him: "He is considered to be exceptionally well qualified for high command or staff assignments: is fully qualified and is highly recommended for promotion to general officer rank." From February 1953 to June 1953 he was Assistant

Division Commander, 5th Infantry Division, Indiantown Gap Military Reservation. His commanding general said of him: "A superior general officer, intelligent, energetic, and extremely loyal." From July 1953 to August 1954 he was Commanding General, Camp Kilmer, New Jersey. His superior officers said of him: "Loyal, dependable, level headed and mature in judgment," and "Outstanding officer, fine character and integrity."

General Zwicker is presently under transfer orders to Army Forces, Far East, for assignment within that theater, departing on 27 September 1954.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

JOHN A. KLEIN.
Major General, USA.
The Adjutant General.

1 Incl.: Extract of Citations.

There is a note, "One enclosure, extract of citations," and the matter is rendered under seal.

The extracts from the citations which are referred to in the order are as follows:

Silver Star: For gallantry in action on the coast of Normandy, 6 Jun 44.

Bronze Star Medal: The 2d Inf Div was heavily engaged before Hill 192 in Normandy, France at the time Col Zwicker assumed command of the 38th Inf Regt. His responsibilities were exceedingly grave, due first, to the assumption of command while units were in contact; secondly, to the fact that Germany defensive positions possessed high ground and observation. Nevertheless, Col. Zwicker capably directed combat operations and guided his command in a most commendable manner through the campaign of Normandy.

Bronze Star Medal: In mid-August, the 2d Inf Div moved to Brest on the Brittany peninsula in France. The reduction of Brest involved detailed and continuous coordination of arms in order to eliminate Germany defensive positions prepared with great skill over a period of four years. The 38th Inf Regt, commanded by Col Zwicker, contributed materially to the methodical progress which enforced surrender of the garrison on 18 Sep 1944.

Bronze Star Medal: For meritorious achievement against an armed enemy during the period June 1944 to May 1945.

Legion of Merit: The bitter fighting during the fall and early winter in Germany was followed by the German counter offensive in December, which temporarily halted all forward progress. The enemy penetration was stopped as the Division aided immeasurably in holding the northern hinge of the bulge near Camp d'Elsenborn, Belgium. The hardships and long hours were extremely wearing on physical strength and demanded utmost care to direct and guide various elements of the Division. Col Zwicker capably coordinated and supervised the joint efforts of both staff and command during this period.

Army Commendation Medal: For outstanding achievement in planning and developing the organization of the proposed new Infantry Division (15 Jan 47).

The CHAIRMAN. Does that cover the record matter that the committee decided to take judicial notice of, Mr. Chadwick?

Mr. CHADWICK. Mr. Chairman, this is a certified paper, but I would like, because of the difficulty of transcribing, for the stenographer to have it available for checking purposes against his transcript, to be returned to me.

The CHAIRMAN. It may be received in evidence as exhibit No. 2.

(The document referred to was marked "Committee Exhibit No. 2" and will be found in the files of the committee.)

Mr. CHADWICK. That, sir, comprises our presentation on the fifth point of our evidence relating to Ralph W. Zwicker, general, United States Army.

Mr. WILLIAMS. I am sorry, I didn't understand what you just said.

Mr. CHADWICK. I said that comprises all of our presentation on point 5 with relation to Gen. Ralph W. Zwicker.

I mean, however, it is understood we have the right to return to this subject before we complete our entire case. That is what I have to present at this moment on that point.

The CHAIRMAN. Mr. de Furia, are you ready to proceed with the next matter?

Mr. DE FURIA. We are, Mr. Chairman, if you desire us to do so.

The CHAIRMAN. I will advise you, Mr. Williams, that counsel thinks that the evidence the committee has gathered together on two other categories can be covered tomorrow.

The report, or series of reports rather, in the Army-McCarthy controversy have not been examined by us at all. Obviously there are some matters referred to there that concern this committee and which have been referred to us, so at this point we will recess the public hearing until tomorrow morning at 10 o'clock.

Just a moment before you leave. The committee will go into executive session. We have matters to consider, so we will continue in executive session.

Will our friends kindly leave the room so that we may go on with our meeting?

(Whereupon, at 2:23 p. m., the hearing recessed to reconvene Thursday, September 2, 1954, at 10 a. m.)

HEARINGS ON SENATE RESOLUTION 301

THURSDAY, SEPTEMBER 2, 1954

UNITED STATES SENATE,
SELECT COMMITTEE TO STUDY CENSURE CHARGES PURSUANT
TO SENATE ORDER ON SENATE RESOLUTION 301,
Washington, D. C.

The select committee met, pursuant to recess, at 10:05 a. m. in the caucus room, Senate Office Building, Senator Arthur V. Watkins (chairman) presiding.

Present: Senators Watkins (presiding), Johnson of Colorado (vice chairman), Stennis, Carlson, Case, and Ervin.

Also present: Senator McCarthy; E. Wallace Chadwick, counsel to the committee; Guy de Furia, assistant counsel to the committee; John M. Jex, clerk of the committee; John W. Wellman, staff member; Frank Ginsburg and Ray R. McGuire, members of Senator Watkins' staff on loan to the committee; and Edward Bennett Williams, counsel to Senator McCarthy, with his associates, Agnes A. Neill and Brent Bozell.

The CHAIRMAN. The committee will resume session.

Mr. Chadwick, will you proceed with the presentation of the documentary matter which the committee has taken judicial notice of?

Mr. CHADWICK. Mr. Chairman, we will proceed with the matters embraced within point 2 of the notice heretofore given and read into the record:

Incidents of encouragement of United States employees to violate the law.

I will read from that notice the appropriate excerpts from amendments offered to Senate Resolution 301 by several Senators:

A. Amendment proposed by Mr. Fulbright to the resolution (S. Res. 301) to censure the Senator from Wisconsin, Mr. McCarthy, viz: "(5) The junior Senator from Wisconsin openly, in a public manner before nationwide television, invited and urged employees of the Government of the United States to violate the law and their oaths of office."

B. Amendment proposed by Mr. Morse to the resolution—
in question—

viz: "(e) openly invited and incited employees of the Government to violate the law and their oaths of office by urging them to make available information, including classified information, which, in the opinion of the employees would be of assistance to the junior Senator from Wisconsin in conducting his investigations, even though the supplying of such information by the employee would be illegal and in violation of Presidential order and contrary to the constitutional rights of the Chief Executive under the separation-of-powers doctrine."

C. Amendment proposed by Mr. Flanders to the resolution (S. Res. 301)
* * * viz: "(14) He has publicly incited Government employees to violate their security oaths and serve as his personal informants, thus tending to break down the orderly chain of command in the civil service, as well as violating the security provisions of the Government."

Mr. WILLIAMS. Mr. Chairman——

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. I wonder if you could furnish us, sir, with a copy of the documentary evidence which Mr. Chadwick proposes to introduce this morning so that we might follow it along.

The CHAIRMAN. Do you have copies of the documentary evidence, Mr Chadwick?

Mr. CHADWICK. Mr. Chairman, I think we can find separate copies to be delivered to Mr. Williams. I will have to turn to my assistants for that.

Senator STENNIS. Do you have copies for the committee members?

The CHAIRMAN. Do you have copies for the committee?

Mr. CHADWICK. I am afraid we do not have that many copies.

Mr. WILLIAMS. I would rather have a committee member have mine, if there is any choice to be made.

Senator STENNIS. No. My suggestion was secondary to the counsel. I think he is entitled to the document.

The CHAIRMAN. Yes.

Senator JOHNSON. Surely.

Senator STENNIS. Surely.

The CHAIRMAN. I think if I remember correctly that the material will be taken from the hearing records of the Army-McCarthy controversy, and I assume that counsel has a copy of that, and the page number.

Mr. WILLIAMS. That was a pretty long controversy, though, Senator Watkins, and I could not carry it all down here this morning.

The CHAIRMAN. I realize that. And I hope we have copies for you.

Mr. CHADWICK. I am in difficulty with respect to this, Mr. Williams, only for this reason. We have our four working trial briefs to which I intended to refer, but I relieved two of my assistants this morning to pursue inquiry outside. They have their copies with them. Mr. de Furia needs his copy. I have mine.

You understand the dilemma in which I find myself. If you had asked me yesterday—please do not think I am criticizing you—but if you had asked me yesterday, I would have been better prepared on this.

You can be assured, of course, that we are reading from the records of the committee. But that is not very helpful to you, sir.

Mr. WILLIAMS. Did I understand you to say that you had four, Mr. Chadwick?

Mr. CHADWICK. Four working copies.

Mr. WILLIAMS. May we not have at least one of those so that we can follow the evidence?

Mr. CHADWICK. I don't believe you understood me. Two of them are in the possession of gentlemen who are not here. Mr. de Furia, my assistant, must have his copy.

If the chairman will indulge us, we will send a messenger immediately upstairs to our room to see if we can get these papers.

Mr. WILLIAMS. All right.

The CHAIRMAN. We will pause a moment here while we untangle this difficulty.

(Discussion off the record.)

The CHAIRMAN. The committee will resume session.

Mr. CHADWICK. I understand, Mr. Chairman, that Mr. Williams now has copies of the matter, and we can proceed in course.

Mr. Chairman, I ask the committee to take judicial notice that the Army-McCarthy hearing under Chairman Mundt was public and was televised nationally.

The CHAIRMAN. The committee will take such notice.

Mr. CHADWICK. I offer and read into evidence certain excerpts from the transcript of the Army-McCarthy hearing before the Permanent Subcommittee on Investigations of the Committee on Government Operations on May 27, 1954, May 28, 1954, June 15, 1954, and June 16, 1954, at the following pages indicated, asking the committee to take judicial notice thereof.

The CHAIRMAN. That will be the order.

Mr. CHADWICK. I suggest that the counsel for Senator McCarthy should and no doubt will, be accorded the right to offer any other relevant and material excerpts from such transcript.

The CHAIRMAN. Well, that is provided for and there is no necessity for notice to be served upon Senator McCarthy. That, of course, has been the ruling and understanding of the committee all along. We want to get all the relevant and pertinent evidence, no matter where it leads, as long as it will give light on the charges that are before the committee.

We are doing that for the benefit of the Senate as well as for the members of this particular select committee. You may proceed, Mr. Chadwick.

Mr. CHADWICK. I am about to read from page 3915, May 27, 1954, in volume 22. I ask Mr. Williams if that is conveniently at hand to him.

Mr. WILLIAMS. Yes.

The CHAIRMAN. You may proceed.

Mr. CHADWICK (reading):

Senator McCARTHY. Mr. Chairman, in view of Senator McClellan's statement and his request, I would like to make it clear that I think that the oath which every person in this Government takes, to protect and defend this country, against all enemies, foreign and domestic, that oath towers far above any Presidential secrecy directive. And I will continue to receive information such as I received the other day. In view of Senator McClellan's statement that he feels that it is a crime for someone to give me information about traitors in Government, I am duty-bound not to give the Senator the names of those informants.

Mr. WILLIAMS. Mr. Chairman, I, of course, recognize that this evidence has to be introduced piecemeal from the record. And I certainly am cognizant of the fact that we have the right in the sense to offer such portions of the record as we choose.

The CHAIRMAN. So long as it is relevant and material to this issue.

Mr. WILLIAMS. Yes, that would be for the Chair to decide.

The CHAIRMAN. I want to make that clear now, because we could not have just everything offered. I am sure you would not attempt to do that, either.

Mr. WILLIAMS. I would not.

The thing that disturbs me, however, is that what Mr. Chadwick has just read does not present the full picture, and it is almost out of context, because antedating this colloquy which he is reading there is a colloquy which makes it clear what Senator McCarthy had reference to when he said, "I will continue to receive information such as

I received the other day." And I will have to get the pagination for the committee.

The CHAIRMAN. If you can do that, Mr. Williams, we would be very glad to put that in, because I can see very clearly that there ought to be enough of the background so that we would not be taking the statements out of context.

Mr. WILLIAMS. I have that here, sir. I have the quote to which I have reference. It may be that the committee—

The CHAIRMAN. Would you submit it to Mr. Chadwick and we will probably have it read or take a look at it.

Mr. WILLIAMS. I can read it in just a sentence—it is just a sentence long—two sentences.

The CHAIRMAN. Give us the page, and so on.

Mr. WILLIAMS. I have not the page. That is why I want to read it. Maybe we can have some help here in finding it.

So far as I am concerned, I would like to notify those 2 million Federal employees that I feel it is their duty to give us any information which they have about graft, corruption, communism, treason, and that there is no loyalty to a superior officer which can tower above and beyond their loyalty to their country—in other words, from the "which Mr. Chadwick has made" it is not clear what information is referred to, but if you read the entire context it becomes apparent that reference is made to information on graft, corruption, communism, and treason in the executive branch of the Government. I feel that should go in, and I think that we ought to find that here in this.

The CHAIRMAN. We will accept it on your statement. Was that prior to the material that Mr. Chadwick was just reading—did that occur—

Mr. WILLIAMS. Yes, sir.

Senator CARLSON. I have a copy here of some notes, and a letter from Senator Wayne Morse in which he copied that quote, and that is found in transcript volume 22, page 3918.

Mr. WILLIAMS. I find it now.

The CHAIRMAN. Just a moment.

Mr. Williams, I am advised by our staff that the one you just read is the next one.

Mr. WILLIAMS. I see.

The CHAIRMAN. The next one is the one that counsel for the committee intended to read.

Mr. WILLIAMS. Good. I think that places this whole thing in proper context.

The CHAIRMAN. We intend to do just what you advised and suggested should be done.

If, inadvertently, by not covering the entire record, we have left anything out, we will be only too happy, as we advised you last night, to receive suggestions, anything we can do to help get all the evidence that is relevant and material to the issues here.

Mr. WILLIAMS. Thank you, sir.

The CHAIRMAN. And we renew that offer now. If you have any leads or any suggestions or any clues that will help us get evidence or material relevant to these charges that you think ought to be in, for the information of the committee and the United States Senate, of course, for which we are working, then we will be very glad to put

the staff to work on those matters, because this is to be an all-out investigation to get all the facts, no matter who they help or hurt.

Mr. CHADWICK. Mr. Chairman, may I be allowed a word with Mr. Williams?

The CHAIRMAN. Yes.

Mr. CHADWICK. I understood from you that the matters which you read preceded what I had just read.

Mr. WILLIAMS. I was obviously in error on that, Mr. Chadwick, because Senator Carlson just corrected me and said it came 3 pages later. But my original position is the same, that it was part of the original context to which he had reference when he made the statement.

Mr. CHADWICK. In the next succeeding page, which I will reach in half a minute, is the material to which you refer.

Mr. WILLIAMS. I appreciate that.

The CHAIRMAN. Proceed with the reading.

Mr. CHADWICK. Mr. Chairman, with your permission, I will start again with the paragraph I read in order that I may know what the continuity is here:

Senator McCARTHY. Mr. Chairman, in view of Senator McClellan's statement and his request, I would like to make it clear that I think that the oath which every person in this Government takes, to protect and defend this country, against all enemies, foreign and domestic, that oath towers far above any Presidential secrecy directive. And I will continue to receive information such as I received the other day. In view of Senator McClellan's statement that he feels that it is a crime for someone to give me information about traitors in Government, I am dutybound not to give the Senator the names of those informants.

Senator McCLELLAN. I just want to get it straight.

Senator McCARTHY. May I say that that will be my policy. There is no power on earth that can change that.

Again, I want to compliment the individuals who have placed their oaths to defend the country against enemies, and certainly Communists are enemies, above and beyond any Presidential directive. And none of them—none of them will be brought before any grand jury because of any information that I give. If any administration wants to indict me for receiving and giving the American people information about communism, they can just go right ahead and do the indicting.

I now read, Mr. Chairman, from page 3918, the hearing on May 27, 1954, from volume 22.

The CHAIRMAN. Still speaking of the Army-McCarthy controversy hearings.

Mr. CHADWICK. Yes, sir. These are all applicable to that:

Senator McCARTHY. I am at this point deeply concerned to find my two Democrat colleagues in effect notifying the 2 million people who work for this Government that they think it is a crime for those employees to give the chairman of an investigating committee evidence of Communist infiltration, treason. I think that will serve to discourage them. As far as I am concerned, I would like to notify those 2 million Federal employees that I feel it is their duty to give us any information which they have about graft, corruption, communism, treason, and that there is no loyalty to a superior officer which can tower above and beyond their loyalty to their country. I may say that I hope the day comes when this administration notifies all Federal employees that any information which they have about wrongdoing should be given to any congressional committee which is empowered to take it.

I now read from page 4260 of the same matter, in volume 23, with respect to the date of May 28, 1954:

Senator McCARTHY. I may say, Mr. Chairman, that I have instructed a vast number of these employees that they are dutybound to give me information even though some little bureaucrat has stamped it "Secret" to protect himself.

From page 6796 of the hearing on June 15, 1954, appearing in volume 34:

Senator McCARTHY. Mr. Carr, can you think of any reason why the old Truman blackout order of 1948 should be maintained in effect as of 1954?

Mr. CARR. No, sir.

Senator McCARTHY. Just one further question. If our committee is to perform its function, it is imperative, is it not, that every blackout order, regardless of whether it is Truman's or anyone else's be cancelled instantly.

Mr. WILLIAMS. Mr. Chairman—

Mr. CHADWICK. Excuse me. Let me read—

The CHAIRMAN. Mr. Williams, let the counsel finish the reading. Then I will recognize you.

Mr. CHADWICK. Just one more line, sir:

Mr. CARR. I think that is correct, sir.

I pause.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Mr. Chairman, I listened with interest as Mr. Chadwick read this last excerpt from the record, and it seems to me that it is not at all germane to the charge which was categorized under count 2, because, as I understand the language that has just been read, Senator McCarthy is asking a witness as to the advisability of changing the directive of the executive branch. He is not there asking that anyone override that directive. I do not see how that is germane to the charge that he urged employees not to follow the directive.

The CHAIRMAN. I will say I do not have a copy of the material read, and my attention was diverted momentarily from the reading. So I will ask Mr. Chadwick to read it again.

Mr. CHADWICK. The excerpt reads as follows:

Senator McCARTHY. Mr. Carr, can you think of any reason why the old Truman blackout order of 1948 should be maintained in effect as of 1954?

Mr. CARR. No, sir.

May I suggest that there is a special pertinency in respect to the interrogation from the Senator addressed to Mr. Carr?

The CHAIRMAN. Will you explain what it is?

Mr. CHADWICK. My recollection is that Mr. Carr was associated with the committee of which Mr. McCarthy was the chairman.

The CHAIRMAN. At the same time, Mr. Carr was a witness.

Mr. WILLIAMS. Won't you read the next question, Mr. Chadwick, because that demonstrates the point that I make here—that the question is rather directed to Mr. Carr asking his opinion on whether or not it is a good thing to have that administrative or Executive order in effect? It is not the thought of anyone to disregard it. It goes to the wisdom of keeping the order in effect, which is entirely outside the charge. I am sure there is no charge against Senator McCarthy here for having an opinion that the Executive order is unwise.

The CHAIRMAN. I will ask Mr. de Furia to respond to what you have said.

Mr. DE FURIA. Mr. Chairman, the difficulty here, of course, is for committee counsel, which were instructed to present all the testimony in this case, whether it bore one way or bore the other way, to designate and read into the record a set of particular excerpts which would be fair.

Now, the rule of evidence, of course, is that evidence may be competent, relevant, and material, and it is admitted into the record.

How much weight shall be given to any particular part of the evidence is for the court, or, in this case, for the committee.

We suggest, Mr. Chairman, that these questions and answers shed some light on the mental processes of Senator McCarthy with reference to this particular problem, and we feel it is evidence that the committee should properly weigh. Now, it may be there are other parts of this testimony, there are other sentences, there are other questions, that should be incorporated in the record.

So far as committee counsel is concerned, we have no objection to that whatever, but we think that the committee should permit the reading of all these excerpts in a continuous fashion, and that will give a clear picture of what we are trying to delineate, sir.

Mr. WILLIAMS. I understand now the counsel's position. He is not offering this as evidence in support of the charge itself that there was an encouragement of employees—

The CHAIRMAN. On the other side, it may show that the charge is groundless, and that is in line with the policy we have adopted.

Mr. WILLIAMS. I thought the record should be clear on that, sir.

The CHAIRMAN. The matter will be received.

Proceed.

Mr. CHADWICK. I will now read from page 7013 of the hearing on June 16, 1954, volume 35. Are you ready, Mr. Williams?

Mr. WILLIAMS. Yes, sir.

Mr. CHADWICK (reading):

Senator McCARTHY. Senator—

addressing Senator McClellan—

may I say that the law is very clear. Back in 1912 there was a hassle pretty much on the order of what we have today. At that time my predecessor, Senator Bob La Follette, Sr., introduced a bill which was passed. As far as I know, it is still the law today.

It provides that every individual in civil service has the right to furnish "information to either House of Congress or to any committee or member thereof," and that right shall not be interfered with.

Aside from the reading, starting with the word "information" and ending with the word "thereof" are quotation marks.

I read from page 7013 continuing:

Senator McCLELLAN. Does that not mean legal information? That doesn't refer to someone taking a classified document and passing it out.

Senator McCARTHY. I think you are completely wrong, Senator. I don't think any Government employee can deny the people the right to know what the facts are by using a rubber stamp and stamping something "Secret."

Senator McCLELLAN. This is a legal question.

Senator McCARTHY. I don't think it is a close question at all. I don't think it is even a close question.

I read consecutively from the same documents at page 7014 the following:

Senator McCARTHY. Senator—

addressing Senator McClellan—

may I make it very clear that there is no question about it. Regardless of who tries to sustain me or vice versa while I am chairman of the committee I will receive all the information I can get about wrongdoing in the executive branch. I will give that information to the American people.

I read from page 7017:

Senator McCARTHY. May I say, Senator—

Dirksen; I supply the reference because the record reads "Senator."
[Continuing:]

May I say, Senator, I think you have raised and covered the point so well it doesn't require any answer of any kind. I personally feel that the oath which every individual takes to defend this country against all enemies, foreign or domestic, places upon him the heavy responsibility to bring to the Congress any information of wrongdoing where the matter is not being taken care of properly by his superiors.

I may say, Senator, that I feel strongly that it isn't even a close question. I think that oath to defend our country against all enemies, foreign and domestic, towers above and beyond any loyalty you might have to the head of a bureau or the head of a department.

Mr. WILLIAMS. Mr. Chairman.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. I am sorry to interrupt, sir, but I feel that in order to place that in context, it is necessary to read the one paragraph of expression from Senator Dirksen that appears just before that, so we will know what position Senator McCarthy herein is adopting. Otherwise it seems to be meaningless.

I would ask you just to read that. I will hand it over to you, if you will.

Mr. CHADWICK. We would like to see it, sir.

Mr. WILLIAMS. All right.

The CHAIRMAN. The Chair will rule that the statement made by Senator Dirksen immediately preceding the information on the record, the quotation that was just read, should be received.

Mr. CHADWICK. I read the testimony, all the statement of Senator Dirksen, at page 7017 of the transcript immediately preceding the last paragraph read by me.

The CHAIRMAN. Just a moment, Mr. Chadwick. Senator Dirksen was not testifying, as I recall it, that morning. He was merely a member of the committee, and you referred to it as testimony.

Mr. CHADWICK. I intended not to. Perhaps I did identify it as testimony or a statement. I have not had time to go over it.

The CHAIRMAN. I think it is a statement. I think at one time probably he was sworn and did testify.

Mr. CHADWICK. I amend anything I have said before, and quote the following statement of Senator Dirksen, published at page 7017 of the same transcript as we have been using.

It is a question that admits of no easy solution. You might approach it legalistically or try to look at all sides. I am wondering about a case like this: Let's assume that a document in a file which two men have knowledge which, if it fell into the hands of the enemy, could be regarded as giving aid and comfort to the enemy, which is the accepted definition for treason. Suppose 1 of the 2 should say, "I have a friend who will transmit this to the enemy." And the other admonished him of his duty to his country, and then went to complain to his superior about it and got no satisfactory answer, and then called it to the attention of some Member of the House or the Senate. Legally and morally, where do you draw the line where the security of the country is involved? It might be a clear case of treason. Should 1 of the 2 individuals with an ingrained sense of loyalty and devotion say, "This is treason if you give it, and while I get no comfort from my superior by telling him that you have this in mind, I will call up one of the Senators and tell him about it."

The question is, not what about the legal aspect, but what about the moral aspect that is involved as well?

That is the end of the quotation as I understand, that Mr. Williams desired to be read.

The CHAIRMAN. Does that cover what you wanted, Mr. Williams?

Mr. WILLIAMS. Yes.

The CHAIRMAN. Thank you for calling it to our attention.

Mr. CHADWICK. It is possible that in reading the number 7017 from the transcript, I misquoted one of the figures. I repeat it again, I think, for the third time, this is at page 7017 of the transcript.

Mr. Chairman, I proceed to read in order from page 7022 of the transcript in question:

Senator SYMINGTON. Now, I understand you believe, as permanent chairman of the Subcommittee on Investigations, you are an authorized person to receive classified documents; is that right?

Senator McCARTHY. I am an authorized person to receive information in regard to any wrongdoing in the executive branch. When you say "classified documents," Mr. Symington, certainly I am not authorized to receive anything which would divulge the names of, we will say, informants, of Army Intelligence, anything which would in any way compromise their investigative technique, and that sort of thing. But as chairman of this watchdog committee, I think that is what you call it, I feel I am in duty bound to receive any information about wrongdoing.

I now read from page 7026 to page 7028 of the same transcript:

Senator McCARTHY. Could we now—you [Senator McClellan] and I—both say to the public you will either be the chairman or the ranking Democrat member, I will either be the chairman or the ranking Republican member. Can we now say to the public, say to the people who are working in Government, that if they know of any wrongdoing, that no phony stamp of secrecy or classification should keep that from the Congress? Can we agree now, John, that if anyone brings you information or me information, if they do that in a confidential manner, that their names will not be made public? If we do that—

Senator McCLELLAN. I will state my position very frankly. If they do it legally, no, their names will not be given out. I will not protect people in crime. Now, if it is a crime, that is the issue I am trying to get settled; but if you want to take the other position, that is your privilege. But I say, frankly, that I will not protect people in crime against my Government. As to giving information, I don't blame you for the position you took with respect to the one who gave you the document, if you felt that it was legal, and you had a right to take it. I would certainly agree with you that you were under no obligation whatsoever to give his name. That is the position I take. But I go back to the position, at all times, that I will not condone crime. I don't know what your position is.

Senator McCARTHY. Senator, could we do this—and I don't want to pursue this any further because we are all trying to end up these hearings—can we agree that if anyone in Government knows of any wrongdoing, whether it is theft, whether it is treason, whether it is Communist infiltration, that if they come to you or if they come to me, that we will consider that they are doing their duty, and that they are not guilty of any crime, because the law says they have a right and the duty to do it? They take an oath of office to protect this Nation. If we could agree upon that, Senator—

Senator McCLELLAN. That is your position.

Senator McCARTHY. May I finish? If we could agree on that, then I think that much of this time, which might otherwise be considered wasted, would not be wasted.

Senator McCLELLAN. May I say to you, in answer to that, if one brings to me a classified document, and I am of the opinion he has violated the law, then I will be under no obligation to keep his name secret. And until you can settle that question, I cannot follow—

I now read from the same transcript at pages 7034-7035:

Senator SYMINGTON. I am for a government of law and not men.

Now, may I continue with the questioning? As I understand, Senator, going back to the last one, do you believe, as chairman of the Permanent Committee on Investigations, you are an authorized person to receive classified documents; is that right?

Senator McCARTHY. First, Senator, I assume when you made that comment, that you may have wanted me to comment on it. I would say, when you made that profound statement that crime is wrong, I agree with you.

No. 2, your question is whether, as chairman of the Investigating Committee I am entitled to receive classified documents.

Senator SYMINGTON. Will the reporter read the question, please, because the Senator did not get it?

Senator MUNDT. The reporter will read the question.

(The reporter read from his notes as requested.)

Senator McCARTHY. The answer to that, Mr. Symington, is that no one can deny us information by stamping something "Classified."

Senator SYMINGTON. I am sorry, Senator, I didn't hear you.

Senator McCARTHY. I said the answer to that is that no one can deny us information, deny the American people information, by stamping it "Classified."

Senator SYMINGTON. Regardless of whether it is top secret, Q-clearance, or secret?

Senator McCARTHY. It isn't a question of the stamp on it. We should not receive or get any information which gives the names of any informants of any investigative agency, anything that discloses their investigative technique or anything which might endanger the Nation's security. We have not.

I read from page 7037 of the same transcript:

Senator McCARTHY. Any committee which has jurisdiction over a subject has the right to receive the information. The stamp on the document, I would say, is not controlling. Any evidence of wrongdoing should be made available to the people, especially when it has to do with treason.

Senator SYMINGTON. Regardless of instructions from his superior, anybody can decide themselves, regardless of the classification of a document, if they believe that it is wrong, whatever their superior does, therefore they have the right to tell it to a congressional committee, is that right?

Senator McCARTHY. Senator, so that there is no question, let me repeat again, anyone who has evidence of wrongdoing, has not only the right but the duty to bring that evidence to a congressional committee.

Just one minute.

Mr. WILLIAMS. I do not think you finished that statement of Senator McCarthy, Mr. Chadwick. There is another sentence. He was answering.

Mr. CHADWICK. I finished it as my notes have it appear, sir. If there is another sentence, I will be very glad to have you read it.

Mr. WILLIAMS. The answer was not complete. That is all I call your attention to.

Mr. CHADWICK. Mr. de Furia, will you get the copy, and let us see what the question is?

Mr. WILLIAMS. The last sentence was this, and I am quoting:

Now, Alger Hiss, you see, if you followed your line of reasoning, Senator, Alger Hiss would not be in jail. Alger Hiss could stamp the information about himself secret and top secret. You just can't do that.

That is the complete answer.

The CHAIRMAN. We have no objection. That should go in.

Mr. CHADWICK. I ask the chairman's indulgence for just a moment.

Mr. Chairman, that completes the matters which we desire to submit to your attention under point 2 of our notes.

The CHAIRMAN. You mean, point 2 of the charges as the committee decided to take them?

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. There are some things I should like to see placed in the record, and I suggest that the staff get them and prepare to introduce them at an appropriate time:

1. I think the record should have a copy of the oath of office which Federal employees do take;

2. I should like to see the appropriate paragraph from the Legislative Reorganization Act which deals with the authority of what was then designated as the Committee on Expenditures in the Executive Departments, and is now known as the Committee on Government Operations;

3. The paragraph from the rules of the Senate which recites the jurisdiction of the committees as pertaining to the presently designated Committee on Government Operations;

4. Appropriate sections, if any are now applicable, from the act which Senator McCarthy referred to as having been introduced by his predecessor, Senator LaFollette;

5. Appropriate sections or paragraphs from the Espionage Act relative to the handling of classified material;

6. The law, or appropriate sections therefrom, relative to the powers of employees or officers in the executive branch of the Government to classify or declassify documents; and

7. Any references in the statute, if there be such, which define the responsibility of those who have access to classified material, with respect to reporting to their superiors any violations of law in the handling of such classified material.

The CHAIRMAN. Senator Case, the suggestions are all very good, and we thank you for them.

I will say that committee counsel and staff had anticipated the need for all that information, and rather than break up the continuity of the testimony itself, we decided to place it immediately following the conclusion of each one of these testimony readings. That will be inserted in the hearings at the appropriate points.

Senator CASE. I have no objection to where it comes in, Mr. Chairman. It may be that part of it will be covered in the presentation on the next category.

The CHAIRMAN. I think they are all good suggestions. I just conferred a moment ago with Mr. Chadwick, and he asked the very question that you had in mind, where they are to be put in—should we put them in now or at the conclusion of each phase of the testimony.

I think the proper thing to do is probably to insert them there, and it is not necessary to read them at this time, all of those sections of the law, unless the committee members want it. If the committee members want it, we can have that done now.

They are mostly legal matters. They are quotations from the statutes and they will ordinarily come in under the legal phase of this investigation.

Mr. WILLIAMS. I assume that ruling pertains also to us, Mr. Chairman. We have, of course, a legal position on this, but I assume from your rulings of the other day you prefer to hear that in defense.

The CHAIRMAN. That's right. Well, you can suggest then. Even though you put them in later, we will try to put them along with the committee investigations at the same point in the record. Will that be satisfactory?

Mr. WILLIAMS. We will wait until we go to the defense.

The CHAIRMAN. I think unless the committee objects, the proper time to do that is after we have concluded the testimony, and then

inserts can be made following each one of these categories of the legal matters that should be taken into consideration.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. It will not consume then the time of the committee to receive it now. Is there any objection to that course, Senator Case?

Senator CASE. No; no objection at all. I just thought we ought to have it for the benefit of the committee as we study and review the evidence, and also that it should be available conveniently for the consideration of the Senate when the committee makes such a report.

I learned by talking with the assistant counsel, Mr. de Furia, that at least part of what I have asked for will probably be presented in connection with the next classification, and, of course, any part that is presently completely there, I mean that is responsive to the information I requested, won't need to be duplicated, but that can be checked against the requests made, and then at the appropriate time the balance of the information submitted.

The CHAIRMAN. I think you are correct in that statement, and I agree. Proceed with the next category. We will pause temporarily.

(Discussion off the record.)

The CHAIRMAN. The committee will resume.

Mr. DE FURIA. Mr. Chairman, we now pass to that part of the committee counsel's presentation referring to three incidents involving receipt or use of confidential or classified documents or other confidential information from the executive files, based upon the amendment offered by Senator Morse, being amendment D, reading as follows:

Received and made use of confidential information unlawfully obtained from a document in the executive files upon which document the Federal Bureau of Investigation had placed its highest classification; and offered such information to a lawfully constituted Senate committee in the form of a spurious document which he falsely asserted to the subcommittee to be "a letter from the FBI."

And based also upon the amendment proposed by Senator Flanders, No. 13, reading as follows:

He received and held a valuable classified document in possible violation of the Espionage Act. (Revealed in the Army-McCarthy hearings that he had improperly obtained J. Edgar Hoover's report on subversives from the Army, and failed to restore the document to properly authorized hands.) He permitted the document to fall into the hands of a gossip columnist (Walter Winchell).

Mr. Chairman, we continue to read into the record excerpts of testimony and statements made at the hearings before the Permanent Subcommittee on Investigations of the Committee on Government Operations on various dates, beginning May 4, 1954, at the pages indicated, asking that the committee take legislative notice thereof. We will read into the record, first—

The CHAIRMAN. You may proceed. The committee will take judicial notice of the record.

Mr. DE FURIA. Mr. Chairman, parts of this that I am about to read do not appear in the printed portions of those hearings, and we have, therefore, obtained the official transcript and will read from the transcript where necessary.

Mr. Williams, do you have a copy of the material I am about to read?

Mr. WILLIAMS. I am sure that I do not have it. I was not furnished with a copy.

Mr. DE FURIA. We will be glad to supply that deficiency, sir.

May I proceed, Mr. Chairman?

The CHAIRMAN. Proceed.

MR. DE FURIA. Page 703, volume 18. Secretary Stevens is on the stand.

Senator McCARTHY. Mr. Secretary, I would like to give you a letter, one which was written incidentally before you took office but which was in the file, I understand, all during the time you are in office—I understand it is in the file as of today—from the FBI, pointing out the urgency in connection with certain cases, listing the fact, for example, that Colemah had been in direct connection with espionage agents—

there is an omission or there is a deletion—and then we continue with the following:

Senator JACKSON. May I ask this question? I am a little confused. This is a copy of a letter that is being introduced. I would like to know how it arrived here to the committee, where it came from, and how it came here. This is a letter from J. Edgar Hoover to General Bolling back in 1951. How did it get into the hands of the committee?

Mr. JENKINS. It was handed to me, Senator Jackson, by Senator McCarthy, who is making it the basis of the cross-examination of the Secretary of the Army, the purpose of his examination patently being this—

Senator JACKSON. I think it ought to be authenticated.

Mr. JENKINS. I am getting ready to. I hold now, on the basis of the copy of this letter, and on the assumption that no guardian in interest and no counsel would refer to a spurious manufactured document, that Senator McCarthy's cross-examination of the Secretary with reference to this letter is wholly competent.

Then on page 704, Mr. Chairman:

Senator JACKSON. Mr. Jenkins, it is a very simple matter. Did the committee get this from the Army? Was it subpoenaed? Is it from the FBI? That is the very simple question. How did it come into our possession?

Mr. JENKINS. Which committee, the McCarthy committee or this investigating committee?

Senator JACKSON. Both.

Mr. JENKINS. It was handed to me just now by Senator McCarthy; that is all I know of it. It is a proper basis for a cross-examination. That is very evident from reading the letter.

Senator JACKSON. I understand, but it can be readily identified whether this was a matter that was subpoenaed from the Army files or whether the Army voluntarily gave it to Senator McCarthy.

Mr. JENKINS. I can have Senator McCarthy put under oath and examine him with reference to that particular point, in keeping with Senator Symington's—

Senator MUNDT. A point of order, Mr. Welch?

Mr. WELCH. I respectfully suggest that that be done. I am a lawyer, and the appearance of what purports to be a copy of a letter from J. Edgar Hoover in 1951 addressed to some colonel; is that right?

Mr. JENKINS. A major general.

Mr. WELCH. The mere fact that we have an impressive looking, purported copy of such a letter doesn't impress an oldtime lawyer. I would like to have Mr. J. Edgar Hoover say that he wrote the letter and mailed it. Then we would know what we were dealing with.

Senator McCARTHY. Mr. Chairman?

Senator MUNDT. Senator McCarthy.

Senator McCARTHY. I want to question the Secretary as to whether or not the original of this and other letters like it are in his file. I want to make it clear that I have gotten neither this letter nor anything else from the FBI.

Mr. WELCH. Where did it come from then?

Senator MUNDT. The Chair will rule that Senator McCarthy may ask the witness, if he cares to, whether such a letter is there in the files, and as to other investigative agencies. The Chair holds that none of them have to disclose the sources of their information.

Then on page 705 again, Mr. Chairman:

Senator McCARTHY. Mr. Stevens, would you look at that letter and tell us, No. 1, whether or not you have ever seen it or were ever notified of its contents? I think you should read the letter before you answer it.

Secretary STEVENS. I would like to have the advice of counsel first as to whether or not I am at liberty to discuss a letter from J. Edgar Hoover, because I have grave reservations about discussing at all any letter written by Mr. J. Edgar Hoover unless I have his specific approval. I will, therefore, ask the chairman to give me the opportunity of securing the approval of Mr. J. Edgar Hoover before I discuss any letter purporting to have been written by him, because I think it is a very bad policy to discuss these things without Mr. Hoover's knowing about it.

Senator McCARTHY. Would you like to read it first?

Mr. WELCH. May I add, Mr. Chairman—and I have a letter in my hand and it is headed "Personal and Confidential Via Liaison." which seemed to me to be rather severe words of a confidential nature. I think Mr. Stevens is quite right in saying that this is a matter that ought to be released by J. Edgar Hoover before we deal with it in this room.

Senator MUNDT. The Chair would agree that if the letter is marked "Personal and Confidential" that the contents of the letter should not be revealed without the consent of the Senate.

Continuing on page 706, Mr. Chairman:

Senator McCARTHY. Mr. Chairman, I think I would have no objection to that, but first may I have the Secretary read the letter? I don't intend to inquire about the contents if the Chair feels we should not do that, but I would like to have him read the letter and tell us whether or not that is a duplicate of what he has in his file. If he cannot tell us that, then he can examine the file and tell us, tell us whether or not this is just one of a sequence of letters from the FBI, complaining about the bad security setup at the Signal Corps Laboratory and giving information on certain individuals.

Continuing on page 707:

Senator McCARTHY. May I say I have heard many ridiculous things across the table, but to say that something dealing with the Communist activities of men under the Secretary's command should not be seen by him is the most ridiculous I have heard of. Of the letter here, Mr. Chairman, all I ask is that the Secretary look at it so he can search the files and tell us whether or not the original of that letter is in the file.

Continuing on page 708:

Senator SYMINGTON—

Mr. WILLIAMS. Mr. Chairman—

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. I am sorry to interrupt again, but I have to call attention of the Chair to the fact that Mr. de Furia is reading from the record of the Army-McCarthy hearings, and everything he is reading of course is accurate, but I think there are many things which he is omitting here which should be placed in the record if we are going to read this whole thing, so that all of the remarks that are made will be in the context. Now, there are some statements by Senator McCarthy himself which have a very vital bearing on this whole matter with regard to his attitude and disposition toward the very letter in question. I have reference to things at page 706 of the printed hearings, and that is where I have been trying to follow Mr. de Furia.

It seems to me, I think the Chair has always known my position. I have always been willing, at least throughout this week, while documentary proof went in, to stipulate that the whole record could be considered. But since we are reading these things, I really feel that we ought to read everything so that all statements made by everybody should be in context.

Now, there, on page 706, is a statement by Senator McCarthy that he has no disposition to have the contents of the letter disclosed—

The CHAIRMAN. Mr. Williams, I suggest as a practical matter, now, if you will indicate the matter that you think ought to be read, we will have someone read it, if it is not clearly off on some other subject.

Mr. WILLIAMS. I do not propose to read anything, Mr. Chairman, that is clearly off—

The CHAIRMAN. I assume that. But still I have to make a ruling on that.

Mr. WILLIAMS. Mr. de Furia had gone, I understand, to page 708, as I have tried to follow him here, in two documents.

The CHAIRMAN. I suggest, Mr. de Furia, that you and Mr. Williams get together for a moment and get clearly just what he has in mind that ought to be read, and I think we can settle that in just a moment.

Mr. DE FURIA. Yes.

(Discussion off the record.)

Mr. DE FURIA. May I proceed, Mr. Chairman?

The CHAIRMAN. Did you get the material that Mr. Williams thought ought to be read?

Mr. DE FURIA. Yes, Mr. Chairman. Mr. Williams desires that an additional sentence be read into the record, following the excerpt which I am about to read, and we have no objection, sir.

The CHAIRMAN. Well, proceed to read it.

Mr. DE FURIA. Page 708:

Senator SYMINGTON. Mr. Chairman, I do not know the contents of the letter. I do know it is a letter written to the Intelligence Department of the Army, marked "Personal and Confidential" by J. Edgar Hoover.

Mr. WILLIAMS. There is a sentence following the identification by Senator Mundt which reads as follows:

The Chair does not understand that there is any disposition on the part of anyone to make the contents of the letter public; is that correct?

Mr. Jenkins' answer:

That is correct, as far as I am concerned.

Senator Symington says:

I don't see why we are wasting all this time on a letter that we do not intend to publish or put in evidence.

Some of these things, I believe, Mr. Chairman, have a very direct bearing on the overall attitude of the committee and Senator McCarthy regarding the contents of this letter and their publication. I would like to reserve the right to call those matters to the attention of the committee.

The CHAIRMAN. Yes. Well, you have read them and we received the statement you just read as part of the evidence. Thank you for calling it to our attention.

Mr. DE FURIA. Mr. Chairman, I will proceed, then, on page 708.

Senator MCCARTHY. May I ask that the letter remain in the custody of Mr. Jenkins. That is the only copy I have.

Page 710:

Mr. JENKINS. Mr. Chairman, one other statement. Apparently the contents of this letter are so involved, so important, so sacred, and carry with them so many implications even of violations of the law, that I respectfully decline Senator McCarthy's request that I personally be the custodian of this letter, and I now, in the presence of everybody return it to Senator McCarthy.

Page 712:

Senator DIRKSEN. Mr. Chairman, before you recess, let me ask one question. I wanted to ask Senator McCarthy whether he contemplated inserting that FBI letter in the record.

Senator McCARTHY. May I say to Senator Dirksen that would be entirely up to the Chair. I think first we should have established whether or not it was received, whether it is in the files of the Department of the Army.

Continuing now, on page 720, part 19, May 5, 1954:

Mr. JENKINS. Mr. Chairman, yesterday afternoon the committee instructed me to confer with J. Edgar Hoover with respect to a copy of a letter allegedly in the files of the Intelligence Department of the Army, and to clarify that issue this morning. I am now prepared to do so. Prior to so doing I desire to ask the Secretary one question. * * *

Mr. JENKINS. Mr. Stevens, since yesterday afternoon, have you or not through yourself or those under your command examined the files of the Intelligence Department at the Pentagon with special reference to the original of the letter about which you were questioned yesterday afternoon?

Secretary STEVENS. Yes sir.

Mr. JENKINS. State whether or not such a letter was found in that file or any other file.

Secretary STEVENS. No, sir.

Mr. JENKINS. Now, Mr. Chairman, I desire the Secretary to stand aside momentarily and let me clarify that issue. I desire to call as the next witness my assistant counsel—one of my assistant counsel and a member of my staff, Mr. Robert Collier.

Continuing, Mr. Chairman, on page 720 with the testimony of Robert A. Collier.

Mr. WILLIAMS. Do you intend to read all of the testimony of Mr. Collier, because it seems to me all of this goes right to the heart of this matter?

The CHAIRMAN. What is the answer, Mr. de Furia?

Mr. DE FURIA. We propose to read, Mr. Chairman, I think, sir, all of the testimony of Mr. Collier beginning on page 720, continuing through 721, 722, 723—there are one or two small deletions on 723 which I do not think are material, sir—continuing on 724—there is one small deletion there of some irrelevant matter—725, 726—another deletion of apparently irrelevant matter—727, two small deletions of irrelevant matter, and 728, there is just a small part we desire to read into the record, sir, about half of 729, a small part of 732, continuing on 734 and 735.

All I can say, Mr. Chairman, is that Judge Chadwick directed us to be careful to delete only those portions which were clearly irrelevant and we have tried to follow the judge's instructions, sir.

The CHAIRMAN. I suggest that you follow that order, and when you come to a deletion, if Mr. Williams will call our attention to that deletion, if he thinks it ought to be read, please indicate it.

Mr. WILLIAMS. Thank you very much.

The CHAIRMAN. You may proceed.

Mr. DE FURIA. Beginning again, then, on page 720, Mr. Chairman, with your permission I will read the testimony of Robert Collier.

Mr. JENKINS. Will you please state your full name?

Mr. COLLIER. Robert A. Collier.

Mr. JENKINS. Mr. Collier, you are a member of my staff—assistant counsel, is that correct?

Mr. COLLIER. Yes, sir.

Mr. JENKINS. Mr. Collier, formerly have you or not been employed by the Federal Bureau of Investigation?

Mr. COLLIER. I was, sir. I was employed from April 1, 1941, until October 26, 1951.

Mr. JENKINS. You were present yesterday afternoon when a discussion occurred with respect to a letter. Will you give the date of the letter, Mr. Collier? It has escaped me.

Mr. COLLIER. January 26, 1951.

Mr. JENKINS. At which time the committee instructed me, either myself or by some member of my staff, to confer personally with Mr. J. Edgar Hoover, Director of the Federal Bureau of Investigation.

Mr. COLLIER. I was present.

Mr. JENKINS. Were you present?

Mr. COLLIER. Yes, sir.

Mr. JENKINS. I will ask you whether or not at the close of the meeting I assigned that task to you.

Mr. COLLIER. You did, sir.

Mr. JENKINS. State whether or not pursuant to that, Mr. Collier, you conferred with Mr. Hoover personally.

Mr. COLLIER. I did.

Mr. JENKINS. At what time, approximately, yesterday afternoon or evening?

Mr. COLLIER. From approximately 5:15 until approximately 7:15.

Mr. JENKINS. During the course of your conversation with Mr. Hoover, I will ask you whether or not he called upon you to procure and show to him a copy of the letter about which we are talking?

Mr. COLLIER. Yes, sir; he did.

Mr. JENKINS. I believe dated January—

Mr. COLLIER. 26, 1951.

Mr. JENKINS. January 26, 1951. As a result of that request of Mr. Hoover, did or not you go to Mr. Cohn's office and procure that copy?

Mr. COLLIER. I did.

Mr. JENKINS. And then take it to Mr. Hoover?

Mr. COLLIER. I did.

Mr. JENKINS. Was it shown to him?

Mr. COLLIER. Yes, sir.

Mr. JENKINS. Mr. Collier, now at this time, without my taking the time and still in the interest of expediting the hearing, I ask you to chronologically relate the incidents of that conference with Mr. Hoover—what was done pursuant to the request of the committee and what was said to you by Mr. Hoover?

Mr. COLLIER. Upon receiving your instructions I communicated with the FBI and within a very short period of time obtained an appointment with Mr. Hoover. I went to see him, having advised him of the date and the type of letter involved. Mr. Hoover at that time informed me that they had not found such a letter. He did have another letter of the same date. In order to be perfectly sure that they had obtained the correct letter I returned to the Senate Office Building and obtained from Roy Cohn in Senator McCarthy's office the letter which I now have in my hand and which was the one produced yesterday by Senator McCarthy. I took that letter to Mr. Hoover, and at that time he compared this letter with the letter in his possession of the same date.

There is a short deletion there, Mr. Chairman, that I call to the attention of Mr. Williams.

We continue on page 722 with the words, "I can now report to you."

Mr. WILLIAMS. Go ahead.

The CHAIRMAN. Do you desire the deletion read?

Mr. WILLIAMS. So far as I can see there has not been a deletion, Mr. Chairman; that is why we are confused.

Mr. DE FURIA. Then I will continue, Mr. Chairman, on page 722, and this is a continuation of the testimony of Mr. Collier:

I can now report to you that Mr. Hoover advised me that this letter is not a carbon—

the answer is incomplete.

Mr. JENKINS. Identify the letter when you say "this letter."

Mr. COLLIER. This is the letter produced yesterday by Senator McCarthy. This is not a carbon copy or a copy of any communication prepared or sent by the FBI to General Bolling on January 26, 1951, or any other date. The FBI has in its files a letter—

the answer is incomplete.

Mr. JENKINS. Are you now stating what Mr. Hoover personally told you?

Mr. COLLIER. Yes, sir.

Mr. JENKINS. You may proceed.

Mr. COLLIER. The FBI does have in its files a file copy of a letter dated January 26, 1951, the same date, prepared and sent by the FBI to General Bolling, which was a 15-page interdepartmental memorandum. A carbon copy of that went to Maj. Gen. Joseph F. Carroll, United States Air Force.

Mr. Hoover, in comparing the two documents, advised me that the form of the carbon copy which I have the one introduced, and the yellow copy of the FBI memorandum prepared on January 26, are materially different in form.

I can recount for you, as Mr. Hoover advised me, the difference in that form. For purposes of identification, I will refer to the document introduced yesterday as the carbon copy, and to the yellow copy in the FBI files, the 15-page memorandum, as the FBI original.

On the FBI original the words "Federal Bureau of Investigation" are printed in large block letters across the top of the page. On the carbon copy the words "Federal Bureau of Investigation" are typed. The date January 26, 1951, appears directly beneath the type "Federal Bureau of Investigation" on the carbon copy and is in a different position on the page of the FBI original. The carbon copy has across the top "Personal and Confidential Via Liaison." The FBI original has in the upper-hand corner the words "Via Liaison." The memorandum, the FBI original, is in the form of an interdepartmental memorandum. It is not typed. It merely carries the name of the Director and the FBI. The carbon copy would indicate a signature was to be affixed. The FBI original was addressed to Maj. Gen. A. R. Bolling. The carbon copy is addressed to Major General Bolling, the initials "A. R." being left out.

The same words "Assistant Chief of Staff, G-2, Department of the Army" appear on both documents. In the FBI original the additional words "The Pentagon" appear, that is not on the carbon copy, and the words "Washington, D. C." appear on both documents. The FBI original has the word "from" and the words "John Edgar Hoover, Director, Federal Bureau of Investigation." That is not on the carbon copy. The FBI original has the word "subject" and then typed thereon "Aaron Hyman Coleman, Espionage-R." The "R" stands for Russian and—

the sentence is incomplete.

Senator McCARTHY. Mr. Chairman, I am not sure I understood. You say that is the FBI copy you are talking about?

Continuing on page 723:

Mr. COLLIER. Yes, sir. In other words, the subject Aaron Coleman, Espionage—R, appears on the FBI original. It does not appear on the carbon copy.

This carbon copy carries the salutation "sir." The FBI original carries no salutation.

This carbon copy is 2¼ pages in length. The FBI original is 15 pages in length.

The carbon copy at the end carries the words "Sincerely yours, J. Edgar Hoover, Director." That, of course, did not appear at the end of the FBI original, but actually appeared in the "To" "From" relation in the beginning.

The carbon copy shows no carbon copy being sent to anyone else.

Continuing on page 723:

Mr. COLLIER. I would like to pass to the Chair the diagram which I have drawn which will give you a more visual reference to the two letters which I have brought out.

Senator SYMINGTON. Mr. Chairman, may I make a point of order? When the witness discusses the carbon copy, he might say the alleged carbon copy.

Senator McCARTHY. A point of order, Mr. Chairman. I would like to know who alleged it to be a carbon copy. We have never alleged it to be a carbon copy.

Mr. JENKINS. Mr. Collier, you may proceed.

Senator MUNDT. Proceed, Mr. Collier.

Mr. COLLIER. The FBI original, on the last page thereof, shows the following: "cc, Major General Joseph F. Carroll. * * * U. S. A. F."

Now, that is the difference in form alone. I am distinguishing between form and substance. Mr. Hoover advised me, and examined the two documents in my presence, advised me that the substance of the original FBI 15-page memorandum and the substance of the 2¼-page carbon copy, contain information relating to the same subject matter, and that in some instances exact or identical language appears in both documents.

Other than that, Mr. Hoover feels that to further clarify it would reveal, possibly reveal, the substance of the documents themselves.

Mr. Chairman, I am continuing on page 724:

On that point, Mr. Hoover asked me to inform you that he respectfully refers the committee to the Attorney General for his opinion as to whether or not the contents can be made public in line with security requirements. And since the language is, in some instances, identical, that would apparently go for both documents.

Mr. JENKINS. Mr. Collier, have you in detail related all of the events transpiring in your conference with Mr. Hoover?

Mr. COLLIER. Yes, sir.

Mr. JENKINS. I have no further questions, Mr. Chairman.

Senator MUNDT. Just one question. The Chair is not certain, and I am not sure that you can answer this question, but did you determine whether the FBI original was in the files of the military and available to Secretary Stevens?

Mr. COLLIER. I will go back to the question that Ray asked me. I did not complete it. On that point I determined that the yellow copy in the FBI file, which is the file copy, carries the following handwritten notations concerning the original:

"Delivered to Colonel Cramer, G-2, 1-27-51, W. R. P."

Those initials are those of the liaison representative of the FBI, Wesley P. Reynolds. The carbon copy to Maj. Gen. Joseph F. Carroll, according to a handwritten notation on the yellow, was delivered to "Gill Levy, OSI, 1/29/51, ESS," the initials standing for Ed S. Sanders.

Senator MUNDT. In other words, those originals were apparently delivered in 1951?

Mr. COLLIER. They were, sir.

Senator MUNDT. And were delivered to G-2 at that time?

Mr. COLLIER. The memorandum is dated January 26. It was delivered personally by Mr. Wesley P. Reynolds to Colonel Cramer on January 27, 1951. The carbon copy was delivered personally by Mr. Ed Sanders to OSI on January 29, 1951.

Mr. Chairman, we have deleted a portion and are continuing on page 724 with the statement or question of Senator Mundt, beginning now, "I understand."

The CHAIRMAN. Mr. Williams, do you want that deletion read?

Mr. WILLIAMS. Where does that deletion appear? After 724?

Mr. DE FURIA. Yes; from my notes, Mr. Williams.

Mr. WILLIAMS. Would you read the last thing you just read, Mr. de Furia?

Mr. DE FURIA (reading):

Delivered personally by Mr. Ed Sanders to OSI, 1/29/51.

Now, it may be a turnover instead of a deletion.

Mr. WILLIAMS. Where do you resume?

Mr. DE FURIA (reading):

Senator MUNDT. Now I understand—

Mr. WILLIAMS. Go ahead; that's all right. There is no purpose in putting that in.

Mr. DE FURIA. Page 724:

Senator MUNDT. Now I understand. You were quoting Mr. Hoover then when you say that in some instances the language was identical, that the subject matter was identical, and that, as Mr. Hoover interprets the security laws, the subject matter, both of the FBI copies and the copies from Senator McCarthy's

files, because they deal with an identical subject, should not be revealed in public, short of a ruling of the Attorney General; is that correct?

Mr. COLLIER. I want to make it clear Mr. Hoover did not, of course, refer to his carbon copy when he stated that, because actually this is not a carbon copy of any FBI document. He was referring to his own document, the 15-page memorandum, when he suggested that "I respectfully refer you to the Attorney General for his opinion."

Senator MUNDT. You are speaking for yourself then when you said that because J. Edgar Hoover had told you in some instances the language was identical, the subject matter was identical, that you believe that without authorization from the Attorney General we should not discuss the subject?

Mr. COLLIER. That is correct. Mr. Hoover made no comment concerning this carbon copy.

Senator McCARTHY. Yes, Mr. Chairman; I would like to point out I think this should be explored with Mr. Hoover. As far as I know, if the Chair will refer to page 2 of the hearings where this letter lists the names of individuals at Fort Monmouth, I understand the FBI report gives the names of informants and information. That security information was omitted from this copy, call it what you may, which I have. I would like to know, Mr. Chairman, and the witness has not covered that. Apparently he can because he says he has—

I think there is a typographical error there. It should read:

Apparently he can't, because he says he has not examined the letter whether or not all portions of this document which was—

Incompleted sentence.

Senator MUNDT. That is a question which you should address to the witness, not to the Chair. It would not be a point of order, I don't think.

Senator McCARTHY. No, Mr. Chairman; it is a request of the Chair and this is a very, very important matter, Mr. Chairman. It is a request of the Chair that I am making.

I am making a request that someone from the FBI be called to tell us whether or not all of the language in the documents submitted yesterday is not identical to the language in the documents submitted to the military, with the exception of where we list the name of an individual and put the word after it "derogatory," in some cases "not derogatory," that the FBI report actually contains all the information. I should think we should ask Mr. Hoover whether or not he would object to having put into the record—this is a request I am making of the Chair. May I finish, Mr. Chairman?

Senator MUNDT. Is it a point of order?

Senator McCARTHY. I am making a request of the Chair, a very important request.

The request is this: We have a document here concerning Fort Monmouth, Communists at Fort Monmouth, and a warning relating to them. I want to know, Mr. Chairman, if the Chair will not now call someone from the Bureau who can bring down the document they have, not for public exhibition, and tell us whether or not all the language is not identical except that in this document the individuals are merely named and all security information is left out of this document, where, in the FBI document, the security information is included.

Continuing on page 726.

Senator McCLELLAN. Mr. Chairman, I make a point of order that the document that is presented to us here which we have not read if incomplete—if it contains only 3 pages out of the 15-page document—then the best evidence is the document itself which is available unless it is prohibited by security reasons. If it is prohibited by security reasons then these excerpts from it are not admissible at this hearing. If it is not prohibited, under the the security order and directive of the President, then the original document in full and complete is the best evidence and should be produced.

I have a note of a possible deletion at this point, Mr. Williams, and then I continue with Senator McCarthy.

The CHAIRMAN. Is there a deletion there, Mr. Williams?

Mr. WILLIAMS. Yes; there is.

The CHAIRMAN. Do you want that deletion read?

Mr. WILLIAMS. No, sir.

The CHAIRMAN. Proceed, Mr. de Furia.

Mr. DE FURIA (reading) :

Senator McCARTHY. Mr. Chairman, while I agree considerably with what the Senator from Arkansas says I would say that I think it should be made clear that we are not now requesting, and never have requested, that the security information about these specific individuals be made a part of the record. That is in line with the ruling of counsel, Mr. Jenkins. I do think that the language of the letter, if this language is correct and verbatim—and I have every reason to believe it is—that the language of the letter contains nothing of a security nature except that it warns, admonishes those in charge of Fort Monmouth.

Senator MUNDT. The letter is not admissible.

Senator McCARTHY. The Chair has stated that unless the entire 15 pages could be made a part of the record, none of it could. I want to disagree with that, Mr. Chairman. I think you can delete, as there apparently was deleted in this letter, the security reports on each specific individual. The rest of the letter, I think, is extremely important.

Senator MUNDT. The Chair is ready to rule. Unless his ruling is upset by his colleagues on this committee, he will rule that the counsel for the committee should seek from the Attorney General the permission suggested by Senator McClellan which has been restated by him and by the Chair.

Then there is a deletion, Mr. Chairman. We go down to page 727.

Mr. COLLIER. This letter is not a copy.

The CHAIRMAN. Mr. Williams, will you check that?

Mr. WILLIAMS. How far down do you go to?

Mr. DE FURIA. We begin again :

Mr. COLLIER. This letter is not a copy.

Mr. WILLIAMS. We do not desire that read.

The CHAIRMAN. Proceed, Mr. de Furia.

Mr. DE FURIA. Page 727.

Mr. COLLIER. This letter is not a copy of any document prepared by the FBI.

Senator JACKSON. Or one that he sent out?

Mr. COLLIER. That is correct.

Further down on page 727 :

Senator McCARTHY. A point of order, Mr. Chairman. The Chair says you should request of Mr. Brownell permission to use the entire 15-page document. I would like to ask the Chair to request that if you cannot use the entire 15-page document—I assume he will rule against you on that, because it contains the names of informants—ask him whether or not we can use that portion of the document which was submitted yesterday—find out whether this is a verbatim copy of the FBI memorandum or letter, and if so, whether there is any objection to the introduction of a part of the document, omitting the names, which I submitted yesterday.

Then there is a deletion and we continue with a statement or a question by Senator McCarthy on the same page.

I have—

Mr. WILLIAMS. Go ahead.

The CHAIRMAN. Did I understand you to say to proceed?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Proceed, Mr. de Furia.

Mr. DE FURIA. Continuing on page 727 :

Senator McCARTHY. I have. Mr. Jackson has made a completely false statement. He said I represented yesterday that this came from Mr. Hoover. I made it very clear that I had never received anything from J. Edgar Hoover, that this was not received from Mr. Hoover. Mr. Jackson knows all that.

Page 728:

Senator McCARTHY. Mr. Chairman, a point of order. Mr. Jackson has tried very deliberately to create the impression that this did not come from J. Edgar Hoover. I am sure the evidence will show that this did come from J. Edgar Hoover, and that there has been omitted from it—

there is an interruption there.

We continue, Mr. Williams, and with the chairman's permission, on page 729, a statement by Senator McCarthy beginning with the words, "I very definitely have," is that all right, sir?

Mr. WILLIAMS. Yes.

Mr. DE FURIA. Page 729:

Senator McCARTHY. I very definitely have, of the same nature as Mr. Jackson's. We have a document here which, according to all the information I have, is verbatim, a report given from the FBI. It should be in the Army file. I sent a wire this morning to the Secretary asking for the addendum showing the derogatory material on each individual. I think it is important for Mr. Jackson not to make these statements and try to create these impressions when he hasn't seen the letter. If he will look at it, I believe he will find each and every word is identical to the original letter, with the exception of the fact that where there is listed the names of Fort Monmouth employees and the word "derogatory" put after it in the FBI report, you will find the derogatory information and, perhaps, the names of the informants. If that were included in this letter, Mr. Chairman, then it would be objectionable. We would be violating the rules by submitting it to the committee. That security information is not in the letter. The meat of the letter is here, and I would suggest that we proceed now to examine this young man and see if he can give us this information or not.

Then we continue on page 732 with a question by Senator Symington.

The CHAIRMAN. Is there a deletion at that point?

Mr. DE FURIA. There is a deletion, Mr. Chairman, between 729 and 732.

Mr. WILLIAMS. I cannot tell by just a quick look whether there is anything in those three pages—perhaps you ought to give me a minute here.

The CHAIRMAN. If you wish to take time to read it, we will cease the progress at this point.

Mr. WILLIAMS. I want to make it clear that I know Mr. de Furia is reading it completely fairly. It is just a question of interpretation as to whether something should go in which might help the investigation.

The CHAIRMAN. The Chair is inclined to be very liberal with respect to anything that you think has any bearing on this matter. In other words, we want the full and complete picture so that nothing will be out of context.

Mr. WILLIAMS. I think he can go on.

The CHAIRMAN. You may proceed.

Mr. DE FURIA. Page 732:

Senator SYMINGTON. Mr. Collier, am I correct that Mr. J. Edgar Hoover asked you or suggested to this committee that prior to the publication of this document, that it be—that the matter be consulted with the Attorney General of the United States to see whether the publication of the document was in the interests of the security of the United States?

Mr. COLLIER. That is correct, Senator Symington.

Then there is a deletion, Mr. Chairman, down to page 734, which begins with a question by Mr. Welch, "Right. I think I will do no wrong"——

Mr. WILLIAMS. You may proceed, Mr. de Furia.

Mr. DE FURIA. With the permission of the chairman, I will begin reading again on page 734:

Mr. WELCH. Right. I think I will do no wrong if I read the heading "Federal Bureau of Investigation, January 26, 1951." Are you following me, sir?

Mr. COLLIER. Yes, sir.

Mr. WELCH. Then appears the words which I read yesterday and which startled me so "personal and confidential via liaison"; is that right?

Mr. COLLIER. That is correct.

Mr. WELCH. Then this purported carbon copy of a letter has this appearing "Major General Bolling, Assistant Chief of Staff, G-2, Department of the Army, Washington, D. C., Sir"; is that right?

Mr. COLLIER. That is correct.

Mr. WELCH. Now, passing the body of it and going only to the conclusion that appears at the bottom of it "sincerely yours," and then typed in capital letters "J. Edgar Hoover, Director"; is that right?

Mr. COLLIER. That is correct, sir.

Mr. WELCH. Mr. Collier, as I understand your testimony, this document that I hold in my hand is a carbon copy of precisely nothing; is that right?

Mr. COLLIER. I will say that Mr. Hoover informed me that it is not a carbon copy of a memorandum prepared or sent by the FBI.

Mr. WELCH. Let us have it straight from the shoulder. So far as you know it is a carbon copy of precisely nothing?

Mr. COLLIER. So far as I know, it is, yes; but that again is a conclusion.

Mr. WELCH. So far as you know, this document in this courtroom sprung yesterday by Senator McCarthy is a perfect phony, is that right?

Mr. COLLIER. No, sir; that is your conclusion. I will not draw such a conclusion.

Mr. WELCH. You just told us it is a carbon copy of precisely nothing, haven't you?

Mr. COLLIER. I have said it is not a copy of a document in the FBI file. I will not say that it is a copy of nothing because if it was typed as a carbon there must have been an original.

Mr. WELCH. You would think so, but we can find no trace of an original, can we?

Mr. COLLIER. Not yet.

Mr. WELCH. Anywhere?

Mr. COLLIER. No, sir.

Mr. WELCH. No, sir. If no original of this document can be found, will you go along with me, sir, with my quaint English, when I say it is a copy of precisely nothing?

Mr. COLLIER. You are assuming that the original cannot be found?

Mr. WELCH. That is right.

Mr. COLLIER. My investigation yesterday was to determine whether this was an authentic document. I have made no investigation to determine whether the original can be found or not. It may be that it can be found.

Mr. WELCH. You cannot find a copy of it in the FBI place, can you?

Mr. COLLIER. No, sir.

Mr. WELCH. Now you do not on your investigation—strike it out. You are not, as you sit in this chair, in possession of a single fact which will allow you to believe that the document which I now show you is a carbon copy of any existing original letter?

Mr. COLLIER. I made an examination yesterday to determine whether this was a copy of a document prepared or sent by the FBI. I have not made any examination to determine whether it is a copy of an original now in existence.

Mr. WELCH. Have you any doubt, sir, that it was presented in this room as if it were a carbon copy of a letter signed J. Edgar Hoover, Director, and addressed to Major General Bolling?

Mr. COLLIER. I was present when it was presented, and I do not now remember the exact manner in which it was presented.

Mr. WELCH. Did you have any doubt, sir, that your superior, Mr. Jenkins, was handed a document which he believed to be a carbon copy of a letter?

Mr. COLLIER. That would be for Mr. Jenkins to say.

Mr. WELCH. Did you believe it was a carbon copy of a letter when you first heard it in this room?

Mr. COLLIER. It was referred to as a copy of a letter.

Mr. WELCH. Yes, sir.

Mr. COLLIER. And I observed it. I can draw no further conclusions from it.

Mr. WELCH. And now as you sit in this room, you are unable to tell us from all the information you have been able to obtain last night?

May I have a minute, sir?

The CHAIRMAN. You may.

(Discussion off the record.)

The CHAIRMAN. The committee will now take its recess until 2 p. m.

(Whereupon, at 11:55 a. m., a recess was taken until 2 p. m., the same day.)

AFTERNOON SESSION

Present: Senators Watkins (chairman), Johnson of Colorado (vice chairman), Stennis, Carlson, Case, and Ervin.

Also present: Senator McCarthy; E. Wallace Chadwick, counsel to the committee; Guy G. de Furia, assistant counsel to the committee; John M. Jex, clerk of the committee; John W. Wellman, staff member; Frank Ginsburg and Ray R. McGuire, members of Senator Watkins' staff on loan to the committee; and Edward Bennett Williams, counsel to Senator McCarthy, with his associates, Agnes A. Neill and Brent Bozell.

The CHAIRMAN. The committee will resume session.

Counsel for the committee will resume reading the matters which the committee takes judicial notice of in the Army-McCarthy hearing.

Mr. DE FURIA. With the permission of the chairman, we desire to resume reading at page 736 of the same source material, Page 736:

Senator McCARTHY. May I make it very clear that as far as I am concerned, the Truman directive, or any other directive, will preclude me from examining material bearing upon the security of this Nation. I am very surprised when I find Mr. Welch here worried about disclosing information on Communists, sitting back and slyly approving the violation of the law insofar as eavesdropping is concerned and monitoring. So there is no question about Mr. Collier, Mr. Chairman, there will be no personal and confidential material where it shows that someone is covering up and hiding Communists.

Now, Mr. Chairman, we desire to call to the attention of the committee that that statement from Senator McCarthy on page 736 is exactly as it appears in the printed report of the testimony. Apparently there was some discrepancy. So we checked with the official transcript, volume 10, page 1804, May 5, 1954, and find that the correct wording is as follows:

Senator McCARTHY. May I make it very clear that as far as I am concerned, the Truman directive, no directive will preclude me from examining material bearing upon the security of this Nation. I am very surprised when I find Mr. Welch here worried about disclosing information on Communists, sitting back and slyly approving the violation of the law insofar as eavesdropping is concerned and monitoring. So there is no question about Mr. Collier, Mr. Chairman, there will be no personal and confidential material where it shows that someone is covering up and hiding Communists.

Mr. WILLIAMS. Mr. Chairman—

Mr. DE FURIA. And may I say, Mr. Chairman, that I called this to the attention of Mr. Williams, and he agreed that the words are as I just last read them.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. I certainly agree that the substitution of "no" for "any other" was a proper substitution, but I do want to call attention of the Chair to the fact that the last sentence which has just been read by Mr. de Furia is also inaccurate, and I think a very cursory analysis

of it would demonstrate that, because it is completely without sense. Senator McCarthy advised me that he did not say this sentence:

So there is no question about Mr. Collier, Mr. Chairman, there will be no personal and confidential material where it shows that someone is covering up and hiding Communists.

That is obviously meaningless as it is written there, and it does not accurately represent what was said, because Mr. Collier, although he was a witness on the authenticity of the documents, had nothing to do with the issue which has been discussed there.

I do not think the change is significant or meaningful, but in the interests of accuracy, I think I should call that to your attention.

The CHAIRMAN. Your explanation is in the record, and we will let it stand that way. I mean by that, we will let the record stand. I do not mean that the committee is accepting your interpretation or the other at the moment. We will let it stand as the record shows, your statement pointing out that it seems inconsistent and does not seem to be the correct language.

Mr. WILLIAMS. What it should be is, "So that there is no question about this subject, Mr. Chairman."

The CHAIRMAN. You read it as you think it should be, so that that will be in the record.

Mr. WILLIAMS (reading):

So that there is no question about this subject, Mr. Chairman, there will be no personal and confidential material where it shows that someone is covering up and hiding Communists.

The CHAIRMAN. Proceed.

Mr. DE FURIA. I shall continue then, Mr. Chairman, on page 737:

Mr. COLLIER. Senator McCarthy, may I say that I, as assistant counsel to Mr. Jenkins, am here to get the facts. I don't think it is our purpose nor our right to draw conclusions in any form. I have examined this document, as I have so testified, at the beginning and at the end, in order to establish what kind of document it is, in order to identify it. I have not read the contents.

The part you speak of is on page 2. I feel that in view of the security requirements I should not read that second page.

Senator McCARTHY. I am asking you to look at the top of page 2, which contains nothing in regard to security, but shows that the security information was omitted. I ask you to look at that parenthetical expression. It is very important to establish that fact now, in view of the repeated statements by Mr. Welch that this was a phony and that anyone had a right to believe that all of the security information was in it.

Mr. Chairman, it is important to get at the truth of this right now.

Mr. COLLIER. Senator McCarthy, I feel that I must respectfully decline to read it and determine those facts from it.

Passing on, Mr. Chairman, to page 738:

Senator McCARTHY. Mr. Collier, you say that the Director told you the language was identical in some respects; is that correct?

Mr. COLLIER. That is correct, in some respects.

Senator McCARTHY. Did he tell you that the language was identical in all respects—

Mr. COLLIER. No.

Senator McCARTHY. Except that this 3-page document omitted the security reports furnished by the FBI; that other than that the document is complete?

Mr. COLLIER. No, sir; he did not state it in that way.

Senator McCARTHY. Well, now, what did he tell you?

Mr. COLLIER. He told me that the language is identical in some respects and that it relates to the same subject-matter; that both documents relate to the same subject-matter. That was as far as he felt he was entitled to go.

Page 740.

Mr. WILLIAMS. I think there is some very pertinent language on page 739.

Mr. DE FURIA. Committee counsel did not think so, Mr. Chairman, but as we have repeated, we have no objection whatever to Mr. Williams calling to the attention of the committee any excerpts that he thinks would further clarify this situation.

The CHAIRMAN. Do you know now, Mr. de Furia, the language that he thinks should be significant and should be in the record?

Mr. DE FURIA. No, Mr. Chairman, I do not since I gave to Mr. Williams the transcripts from which we were working, sir.

The CHAIRMAN. Mr. Williams, on your statement that you think it is pertinent, I am going to allow you to read it.

Mr. WILLIAMS. Beginning at page 739, in the fifth paragraph of the official printed report of this investigation:

Senator, may I ask counsel for the Army, so the Attorney General will know the attitude of the parties to this dispute, whether counsel for the Army will consent to having this 15-page document with the security information deleted and this document made public, so that the press and the public can compare the two documents?

I am just reading this because the next part is necessary.

Senator McCARTHY. I know. I just asked whether or not we can transmit to the Attorney General the information that both counsel for Mr. Stevens and Mr. Adams, as well as Senator McCarthy, request that they make the 15-page document public if there is deleted any security information, and that also we make public the document which I have submitted after deleting the names on page 2.

The CHAIRMAN. Does that cover all that you think ought to be added?

Mr. WILLIAMS. Yes.

The CHAIRMAN. You may proceed.

Mr. DE FURIA. Page 740:

Mr. COHN. Mr. Collier, is this much very clear from what you have been able to tell us at this time: that on the date Senator McCarthy mentioned yesterday, January 26, 1951, there was transmitted, under the name of John Edgar Hoover, to Army Intelligence a document?

Mr. COLLIER. I will restate it, Mr. Cohn. Under date of January 26, 1951, a 15-page FBI memorandum was prepared. The original of that memorandum was transmitted to General Bolling's office via liason on January 27, and the carbon copy to General Carroll's office via liaison on the 29th.

Mr. COHN. Sir, did this memorandum go to the Army under the name of John Edgar Hoover?

Mr. COLLIER. Yes, sir. On the memorandum there are the printed words "date, to, from, and subject"; and beside the word "to" was the identification, "Major General A. R. Bolling, Assistant Chief of Staff, G-2, Department of the Army, the Pentagon, Washington, D. C.," and beside the word "from," "John Edgar Hoover, Director, Federal Bureau of Investigation."

Mr. COHN. You say printed. Were they not typewritten?

Mr. COLLIER. They were typed.

Mr. COHN. Typewritten words, "from, John Edgar Hoover, Director, Federal Bureau of Investigation"?

Mr. COLLIER. That is correct.

Mr. COHN. And, sir, is it a fact, on the basis of what you can tell us now, the subject matter of this 15-page memorandum from Mr. Hoover to the Army on that date was Aaron Coleman, then at Fort Monmouth, espionage?

Mr. COLLIER. I will say this: That after the word "from" and the designation "John Edgar Hoover, Director, Federal Bureau of Investigation," there followed the word "subject" and typed thereon was "Aaron Hyman Coleman, espionage—R". For your information the "R" stands for Russian.

Mr. COHN. The "R" stands for Russian.

Now we are passing, Mr. Chairman, with your permission, sir, to page 741, reading as follows:

Mr. COHN. I think we left at this point this memorandum sent under the name of John Edgar Hoover, Director of the FBI, to the Army, dated January 26, and I believe you said delivered on January 27, sir?

Mr. COLLIER. That is correct.

Mr. COHN. Bears the heading "Aaron Coleman, espionage-R."

Mr. COLLIER. Aaron Hyman Coleman.

Mr. COHN. "Espionage-R," and you now tell us that the word "R" stands for Russian?

Mr. COLLIER. Mr. Hoover told me that the "R" stands for Russian.

Mr. COHN. So you can tell us this morning that the 15-page memorandum was a communication from Mr. Hoover to the Army concerning Aaron Coleman, and Russian espionage; is that a fair statement?

Mr. COLLIER. That is what the "to" and the "from" read, and the subject is Aaron Hyman Coleman, Espionage-R.

Mr. COHN. Can you, Mr. Collier, as having been present in the room and a member of Mr. Jenkins' staff, tell us from the testimony of yesterday on the public record that on the day this memorandum was sent over from Mr. Hoover, Aaron Hyman Coleman was the section head in the secret radar laboratory at Fort Monmouth?

Mr. COLLIER. Mr. Cohn, I cannot tell you that of my own personal knowledge.

Mr. COHN. I would ask the Chair, then, to take judicial or chairmanwise notice of the public hearings of this committee of December 8, 1953, which indicate that. I believe I read the job description of Mr. Coleman into the record yesterday.

Now, sir, can you tell us whether Senator McCarthy stated with complete accuracy yesterday that this 15-page memorandum, that this memorandum by Mr. Hoover, was a warning to the Army that at the secret radar laboratories at Fort Monmouth a group of associates of Julius Rosenberg and people with Communist records were operating on a secret link and chain radar project at that time?

Mr. COLLIER. Mr. Cohn, I cannot tell you of my own personal knowledge. I was busy on some other matters. I was in and out of the room. I didn't hear that complete statement. The record would speak for itself.

We now pass, Mr. Chairman, to page 749 of part 20 on May 5, 1954, reading as follows—

Mr. WILLIAMS. Mr. Chairman—

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Sorry, sir. Are you skipping to 749, now, did you say?

The CHAIRMAN. Apparently so, yes, Mr. Williams.

Mr. WILLIAMS. In order to avoid my interrupting Mr. de Furia, which I consistently hesitate to do, I would suggest this, if I may, Mr. Chairman. It is not necessary for us to read these parts that I feel are germane now. So long as all the Collier testimony may be considered of record, I would be satisfied. I cannot stop here now and read 7 pages without delaying this hearing, which I am loath to do.

The CHAIRMAN. I have not read all the Collier testimony, but on the advice of Mr. Chadwick, I think it would be fair to rule that it all can be made a part of the record, and it will appear as appendix No. I.

Mr. WILLIAMS. Thank you, sir.

The CHAIRMAN. And if in the reading Mr. de Furia or Mr. Chadwick do not include it all, the rest of it can be supplied so that the record can be complete.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Proceed.

Mr. DE FURIA. Page 749:

Mr. JENKINS. Are you now prepared to answer the questions asked of me by Senator McCarthy and Mr. Cohn during the noon hour?

Mr. COLLIER. Yes, sir.

I believe, though, that I should recount to the committee the conversation that I had with Mr. Hoover. At the conclusion of that, of course, any questions can be asked.

Mr. JENKINS. You are talking about the conversation between you and Mr. Hoover during the noon hour?

Mr. COLLIER. Yes, sir.

Mr. JENKINS. Will you now relate in detail that conversation which I think will answer Senator McCarthy's questions?

Mr. COLLIER. Upon your instructions, I communicated with the FBI and expressed my desire to talk with Mr. Hoover. Within a few minutes thereafter Mr. Hoover called me on the telephone. He stated that the letter to General Bolling of January 26, 1951, was classified by the word "Confidential" and he does not feel that he has any right to declassify it or to discuss its contents. May I point out at this time that the FBI in 1951 did not use the classifications normally attributed to the military. That is, "Restricted," "Confidential," "Secret," and "Top Secret." They used either the characterization "Confidential" or "Personal and Confidential." Therefore, that confidential, in Mr. Hoover's opinion and in his statement to me, is the highest classification that can be put on a document by the FBI.

We pass now, Mr. Chairman, to page 751:

Mr. COLLIER. On page 2 following the list of names is paragraph 7, which paragraph extends over to page 3 and is identical in both documents. On page 3, the last paragraph No. 8 is identical in both documents. Mr. Hoover advised that he could not make any further comment upon the substance of either of these documents; that it is still classified, and that he still respectfully referred the committee to the Attorney General. He further advised that the original 15-page document was furnished to General Bolling's office by liaison representative on January 27 and that the original and one copy went to General Bolling's office, and the FBI this morning determined from that office that the original and one copy are in their files.

A carbon copy was delivered by a liaison representative on January 29, 1951, to the office of Maj. Gen. Joseph F. Carroll, United States Air Force. The FBI this morning ascertained that that copy is presently in the files of the Air Force.

There were, in addition to those three copies, a yellow tickler copy, a white copy, and the file copy, a yellow copy, and both of those are presently in the files of the FBI.

All copies that were prepared by the FBI are present and accounted for.

We pass now, Mr. Chairman, to page 754, sir:

Mr. COLLIER. From the information in my possession, I will say that paragraphs 1, 2, 3, and 4 are the same; 5 is different, containing a parenthetical statement in place of a paragraph; 6 is the same; and following 6 in this document before me, the 2 1/4 page is a list of names taking up about a half page, whereas in the 15-page document there would have been the names and factual information taking up many pages.

Senator McCARTHY. Right.

Mr. COLLIER. That thereafter, following that, paragraphs 7 and 8 are the same.

Senator McCARTHY. Just so we will have this one final question, is it the last paragraph in the letter?

Mr. COLLIER. That is correct, sir, and was the last paragraph in the 15-page document.

There is a deletion here, and we continue with Senator McClellan. Senator McClellan, on pages 754 and 755:

Just one question, Mr. Chairman.

From what you have seen of the two documents, the one that has been presented here, and the one that you discussed with Mr. Hoover, I will ask you to state whether it would be possible for anyone to compose or present the document now before us except that they had access to the original document or the original copy thereof which still remains confidential and restricted.

Mr. COLLIER. You are asking for my personal opinion on that?

Senator McCLELLAN. From what you have observed of the two. Would it be possible, except that the author of the document now before us must have had access to the original or the original copy thereof?

Mr. COLLIER. I would say that since seven of the paragraphs are identical, that the person who wrote this document must have had access to the original, because the identical language is contained therein.

Senator McCLELLAN. It is still restricted so far as the FBI is concerned?

Mr. COLLIER. Mr. Hoover told me, and as I have stated to the committee at the beginning of this testimony, that it carries the highest classification the Bureau can place on a document, confidential, that he does not feel that he has any right to declassify it.

We pass now, Mr. Chairman, to page 759:

Mr. JENKINS. Senator McCarthy, yesterday afternoon there was presented to me, to be read—and I desire to state that I hastily read it, Mr. Chairman, and that my mind was completely shed of all knowledge of its contents last evening, which perhaps may absolve me of guilty knowledge.

Senator MUNDT. Immunity of which the Senator has divested himself may be imposed upon you temporarily.

Mr. JENKINS. There was handed to me, Senator McCarthy, a letter dated January 26, 1951, and referred to herein as a 2¼-page letter. As I recall, Senator, that letter was handed to me by you; is that correct?

Senator McCARTHY. That is correct. It was passed along the table by me.

Mr. JENKINS. I am sorry, I did not get your last answer.

Senator McCARTHY. I said, yes, it was at least passed along the table from me to you.

Mr. JENKINS.—

There is a deletion here, sir.

Then we continue on the same page, 759:

Mr. JENKINS. That letter was used as a basis by me in further examination or cross-examination of the Secretary of the Army.

Senator McCARTHY. That is correct.

Mr. JENKINS. Senator McCarthy, you are bound to be aware of the fact that some attack has been made upon that letter. I want to ask you at this time to tell this committee all of your knowledge, without my asking you any specific questions at this time, with respect to the 2¼-page letter, particularly where you obtained possession of it, when you obtained possession of it, whence it came, and give any other knowledge that you may have pertaining to that 2¼-page letter.

Senator McCARTHY. First let me make it very clear, Mr. Jenkins and Mr. Chairman, that I will not under any circumstances reveal the source of any information which I get as chairman of the committee. One of the reasons why I have been successful, I believe, in some extent, in exposing communism, is because the people who give me information from within the Government know that their confidence will not be violated. It will not be violated today. There was an attempt to get me to violate that confidence some 2 or 3 years ago, before the Tydings committee. I want to make it very clear that I want to notify the people who give me information that there is no way on earth that any committee, any force, can get me to violate the confidence of those people.

May I say that that is a rule which every investigative agency follows. Mr. J. Edgar Hoover insists that no informants be disclosed and brought up in public. They will not be brought up today, aside from that. I will give you the information that you request, Mr. Jenkins. This came to me from someone within the Army.

As I recall the time, I do not recall the date. I recall he stated very clearly the reason why he was giving me this information was because he was deeply disturbed because even through there was repeated reports from the FBI to the effect that there was Communist infiltration, indications of espionage in the top-secret laboratories, the radar laboratories, that nothing was being done, he felt that his duty to his country was above any duty to any Truman directive to the effect that he could not disclose this information.

And may I say, Mr. Chairman and counsel, now that I am on the stand it has now been established that this is a completely accurate résumé of all of the information in that Federal Bureau of Investigation report, but that our informant, whoever he was, was very careful not to include any security information. I give him credit for that. I call the Chair's attention to the fact that there is no security information in this, and I urge, Mr. Chairman, that this be made available to the public.

No. 2, if you will pardon me, Mr. Jenkins, I know I have objected to long-winded answers, but may I just answer you one bit further? You said to go ahead in chronological fashion.

I received information also to the effect and, Roy, check with me on this, that in 1949 there was a report made of the same nature from the FBI complaining of what would appear to be apparently espionage, September 15, 1950, October 27, 1950, December 1950, again December 1950, again June 5, 1951, January 26, 1951—I believe that is the one we have here—February 13, 1951, February 1952, June 1952, September 1952, January 1953, April 10, 1953, April 21, 1953, and the young man who gave me this information was deeply disturbed, that is why he gave it, because there was no action taken by the Army to get rid of individuals after the FBI had given a complete report.

Mr. COLLIER. Senator McCarthy, I am afraid that is a conclusion you will have to draw. I do not feel that I should. I will say that in substance the paragraphs are as I stated. The difference in form I have also stated.

Mr. JENKINS. Is that the end of your answer, Senator?

Senator MCCARTHY. That is the end of the answer.

Mr. JENKINS. Then do we understand, Senator McCarthy, that you did not get the 2¼-page document from the Federal Bureau of Investigation?

Senator MCCARTHY. I not only, Mr. Welch, did not get this from the FBI, but let me make it clear that I—

That sentence, apparently, Mr. Chairman, is incomplete.

Mr. WILLIAMS. May we have the same ruling on Senator McCarthy's testimony as we had a moment ago on Mr. Collier's testimony, that all of it may be considered of record here, although Mr. de Furia is reading only such portions as he has excerpted.

The CHAIRMAN. You say, all of his testimony—you mean the entire examination of Senator McCarthy?

Mr. WILLIAMS. All of his testimony as I read it concerns this document. And as I do not want to burden—

The CHAIRMAN. You mean all of his testimony—pardon me, so that I get it clear—with respect to this document?

Mr. WILLIAMS. Yes.

The CHAIRMAN. You do not mean his other testimony?

Mr. WILLIAMS. No, just this testimony which Mr. de Furia is reading from now.

The CHAIRMAN. We see no objection to it. It will be considered as having been read into the record, and if it is not all read by Mr. de Furia, counsel for the committee, we will have it inserted. You indicate the beginning and the end of it; will you do that, please?

Mr. WILLIAMS. Thank you.

The CHAIRMAN. To be sure that it is correct by you—we want you to check to see that it is all there.

Mr. WILLIAMS. I will have it read—I just want to make sure that the printed testimony of Senator McCarthy on this stage is included in the record.

The CHAIRMAN. All right, it will be ordered printed as appendix II to this record.

Mr. CHADWICK. Mr. de Furia has asked me to spell him.

The CHAIRMAN. You may proceed.

Mr. CHADWICK. I will turn to page 761 of the same transcript, sir.

Mr. JENKINS (to Mr. Welch). Then, Senator, you did not get the 2¼-page document from the Federal Bureau of Investigation?

Senator MCCARTHY. I did not, sir.

Mr. JENKINS. I am not going to ask you, and I did not intend to ask you the name of the individual who gave you that document.

Senator MCCARTHY. I thank you.

Mr. JENKINS. But, as I do understand it, Senator McCarthy, and we are trying to pursue this question to its logical end so that the committee may know

all of the facts, that 2¼-page document was delivered to you by someone from the Army?

Senator McCARTHY. Yes. I can go a step further, Mr. Jenkins.

Mr. JENKINS. And perhaps in the Intelligence Department? Can you go that far?

Senator McCARTHY. An officer in the Intelligence Department.

Mr. JENKINS. Very well.

Senator, when was that letter, that 2¼-page document delivered to you?

Senator McCARTHY. I will have to consult with counsel on that, if I may.

Mr. JENKINS. Very well; you are entitled to that.

Senator McCARTHY. Mr. Jenkins, I would have difficulty giving you an exact date, but it was early last spring, roughly a year ago. Counsel says he thinks May or June, and Mr. Carr says he thinks also, perhaps, in June. I think it was earlier. I think we had it before Mr. Carr came with us; is that right, Frank?

Mr. JENKINS. When it was delivered to you last spring, approximately a year ago, which would be in early May 1953, were you then advised, Senator, that it was not a copy of an—an exact copy—of the 15-page document in the files of the Intelligence Department, but a condensation of it, as we would call it? That is, what information did you receive at that time with respect to this 2¼-page document in relation to a 15-page document, if you had any such information?

Senator McCARTHY. May I say, Mr. Jenkins, as I recall, I discussed with the officer who delivered this the fact that the document itself shows that there has been deleted security information. That will appear on page 2—

Then going to page 763 of the same:

Senator McCLELLAN. Just one question. Did I understand you to say this document was delivered to you as chairman of the committee?

Senator McCARTHY. I was chairman. In what capacity it was being delivered I don't know. I was chairman of the committee.

Senator McCLELLAN. I ask you now, do you regard it as a committee document or as a personal document? What is it?

Senator McCARTHY. It is available to the committee.

From pages 763 and 764:

Senator DIRKSEN. Mr. Chairman.

Senator McCarthy, is it unusual or extraordinary for confidential documents of this nature to come to you either as chairman of the Senate Permanent Investigating Committee or as an individual Senator?

Senator McCARTHY. It is a daily and nightly occurrence for me to receive information from people in Government in regard to Communist infiltration.

From page 764 of the same:

Senator JACKSON. Was it delivered to you personally or to any one of the staff initially?

Senator McCARTHY. There may have been some member of the staff present; I don't know. The letter came into my possession personally.

Senator JACKSON. You do not know whether your informant gave it to you directly or a member of the staff received it first and then gave it to you?

Senator McCARTHY. I am reasonably certain. Scoop, that this was handed to me personally. Keep in mind that I talk to so many people every day that I just cannot remember who handed me something a year ago.

Senator JACKSON. I mean, to your best knowledge and belief it came to you personally and not through the staff?

Senator McCARTHY. That is correct.

At page 768:

Mr. WELCH. Will you tell us where you were when you got it?

Senator McCARTHY. No.

Mr. WELCH. Were you in Washington?

Senator McCARTHY. The answer was I would not tell you, I would not give you any information which would allow you to identify my informant. That has been the rule of this committee.

Mr. WELCH. How soon after you got it did you show it to anyone?

Senator McCARTHY. I don't remember.

Mr. WELCH. To whom did you first show it?

Senator McCARTHY. I don't recall.

Mr. WELCH. Can you think of the name of anyone to whom you showed it?

Senator McCARTHY. I assume that it was passed on to my staff, most likely.

Page 769:

Mr. WELCH. Mr. Senator, when it was handed to you, was it put in the files of the subcommittee?

Senator McCARTHY. I assume it was.

Mr. WELCH. Like any other paper?

Senator McCARTHY. Like any other of a thousand of papers.

Mr. WELCH. And it became a document belonging to the subcommittee?

Senator McCARTHY. It now belongs to the subcommittee.

From pages 819, 820, and 821 of the hearing on May 6, 1954, testimony of Robert A. Collier:

Mr. JENKINS. Mr. Chairman, I would like to ask at this time that my assistant counsel, Mr. Prewitt, interrogate the witness.

Senator MUNDT. Mr. Tom Prewitt will take over as counsel for the committee and interrogate Mr. Collier.

Mr. PREWITT. Mr. Collier, at the instance of the committee, did you, on yesterday, deliver the 2¼-page reported copy of a memorandum from the Federal Bureau of Investigation to the office of Mr. Herbert Brownell, with the request that he give this committee an opinion on the question of whether or not that information could be released publicly?

Mr. COLLIER. I did. At approximately 5:15 yesterday afternoon, I delivered a letter from Senator Mundt together with the 2¼-page document, which I personally handed to Mr. Robert Minor, assistant to the Deputy Attorney General.

Mr. PREWITT. Do you have an opinion in writing from Mr. Brownell?

Mr. COLLIER. I do. It was delivered at approximately 12 o'clock today.

Mr. PREWITT. Will you read it?

Mr. COLLIER. This is a letter—

Senator McCARTHY. I wonder if we can first have Mr. Mundt's letter, so we can understand what the answer is.

Senator MUNDT. You may read my letter of transmittal first.

Mr. COLLIER. Mr. Prewitt has that.

Mr. PREWITT. This letter is dated May 5, 1954, and addressed to the Honorable Herbert Brownell, Jr., United States Attorney General, Department of Justice, Washington, D. C.:

"As chairman of the Special Investigating Subcommittee and by its direction, I request your opinion as to whether or not the contents or any part thereof can be released by this committee to the public of the following documents:

"1. A 15-page interdepartmental memorandum dated January 26, 1951, from John Edgar Hoover, Director, Federal Bureau of Investigation, to Maj. Gen. A. R. Bolling, Assistant Chief of Staff, G-2, Department of the Army, the Pentagon, Washington, D. C.—Subject: Aaron Coleman, Espionage—R. This document was classified 'Confidential.'

"2. A 2¼-page letter dated January 26, 1951, from J. Edgar Hoover, Director, to Major General Bolling, Assistant Chief of Staff, G-2, Department of the Army, Washington, D. C. This document was classified 'Personal and Confidential.' This document was furnished to the committee on May 4 by Senator Joseph R. McCarthy and is being furnished to you for your perusal by the bearer of this letter, Mr. Robert A. Collier, assistant counsel of the Special Investigating Subcommittee.

"Your expeditious attention to this matter will indeed be appreciated.

"With best wishes and kindest personal regards, I am,

"Cordially yours,

"(Signed) KARL E. MUNDT."

Mr. COLLIER. The communication from the Attorney General is on the letterhead of the Office of the Attorney General, Washington, D. C., dated May 6, 1954:

HON. KARL E. MUNDT,

United States Senate, Washington, D. C.

MY DEAR SENATOR: Upon receipt of your letter of May 5, I inquired concerning the 15-page memorandum referred to therein, and was advised that under date of January 26, 1951, a 15-page memorandum was addressed to Maj. Gen. A. R.

Bolling, Assistant Chief of Staff, G-2, with a copy to Maj. Gen. Joseph F. Carroll, Director, Special Investigations, the Inspector General, USAF, by Mr. J. Edgar Hoover, Director of the FBI. This memorandum is classified "Confidential," which means, under existing law that its contents must not be disclosed "in the best interests of the national security." It was delivered by hand to the appropriate officials of the Air Force and the Army.

I inquired further to determine whether or not the Federal Bureau of Investigation or any person on its behalf had ever authorized the delivery of this memorandum to others, and was advised that the FBI has never released or authorized the release of the memorandum or any portion thereof to anyone except as above stated.

The question as to whether or not this memorandum can now be declassified and made public has been presented to me by your letter.

The FBI has a duty as the principal intelligence agency of the Government, operating within the United States and Territorial possessions, to call to the attention of other agencies of the executive branch of Government information of interest to such agencies. This is particularly true insofar as the investigative and intelligence branches of the armed services are concerned. The Director of the FBI and other intelligence and investigative agencies must be free to exchange information, one with the other, without the fear that information of a classified nature will be made public. The FBI with its enormous responsibilities to the President, the Congress, and the American public must have the fullest cooperation from all persons who possess information bearing upon the internal security of our country. This it cannot have unless it is in a position to give assurances that its files will be kept confidential.

It has been the consistent and I believe wise policy of the Department of Justice, therefore, not to disclose the contents of FBI reports or memoranda or any part thereof. The only exception has been in the rare case where the information contained therein has been fully testified to by a witness or witnesses in court or before congressional committees under oath, so that no element of disclosure was in fact involved, and where no confidential sources of information or investigative techniques would be disclosed.

The 15-page memorandum, if made public, would reveal confidential sources of information on the FBI, and confidential investigative techniques. It contains the names of persons against whom no derogatory material has been shown and unevaluated data as to others. Its publication would be harmful to matters now under consideration.

I must therefore conclude that the memorandum should not be declassified and that publication of the memorandum would be contrary to the public interest.

Your second request refers to a 2¼-page documents, dated January 26, 1951, a copy of which was delivered to us by Mr. Robert A. Collier, assistant counsel of your subcommittee, and which is returned herewith. This documents purports to be a copy of a letter with a salutation: "Major General Bolling, Assistant Chief of Staff, G-2, Department of the Army, Washington, D. C., Sir:" It is marked "Personal and Confidential." It closes with the following type-written signature: "Sincerely yours, J. Edgar Hoover, Director."

Mr. Hoover has examined the document and has advised me that he never wrote any such letter. However, this document does contain phraseology which is identical with words and paragraphs with those contained in the 15-page memorandum referred to previously. In addition this documents contains the listing of names identical with names contained in the 15-page memorandum.

After these names there appear the words "derogatory" or "no derogatory" which were not contained in the original memorandum. Although the 2¼-page document purports to be a letter signed by J. Edgar Hoover, Director of the FBI, these evaluations of "derogatory" or "no derogatory" were not made by him nor by anyone on his behalf. In fact, there is nothing contained in the 2¼-page document to show who made such evaluations. In view of these facts and because the document constitutes an unauthorized use of information which is classified as "confidential," and for the reasons previously stated, it is my opinion that it should not be made public.

Sincerely yours,

HERBERT BROWNELL, Jr.,
Attorney General.

There is a reference to the fact that the letter is marked "Exhibit No. 16."

From pages 3080 to 3083 of the stenographic transcript, volume 18 of the hearing on May 17, 1954:

Senator MUNDT. We will begin this morning by announcing that the Chair has received his reply from the Attorney General to a letter which was written some time ago in connection with the so-called 3¼-page document, and in the interest of time I shall not read my letter of May 10 in its entirety. It is a little long. But I will ask to include it in the record as an exhibit appropriately marked and I shall read the significant passages.

(The letter referred to was marked "Exhibit No. 18" and received in evidence.)

Senator MUNDT. For the purposes of recapitulation, you will recall that this dealt with the 2¼-page document—by the way, it has been returned, and I will ask that it be passed down to Senator McCarthy, since it is his property—in which, paraphrasing my letter, I asked the Attorney General whether his admonition against publishing or releasing the contents of that document in toto held for all portions and all paragraphs. The significant part of my letter after reviewing my previous interrogatory of the Attorney General, was this:

"Would it be possible for you to authorize or clear for use as an exhibit before our subcommittee any of the paragraphs or portions of the enclosed 2¼-page document? It has occurred to some members of the subcommittee that the fact that the 2¼-page document may contain the names of some of those still under investigation or being used as informants could be the basis on which you requested the contents be not divulged. If so, perhaps such names could be deleted and other portions of the document released.

"Will you please write me your reaction to this request, and if you feel it is against the best security interests of the United States to permit any portion at all of the 2¼-page document to be used as an exhibit before our subcommittee, I am sure it will be helpful to us if you will give your specific reasons for making such a determination. We, of course, do not want to make public anything which is deemed to be injurious to our national interest to disclose, but in our search for truth in the current hearings, on the other hand, we would like to have available for our consideration every fact and document which can be included in our record without doing violence to essential security considerations.

"We will appreciate a reply as soon as possible."

Next are the words, still Senator Mundt:

I talked about the enclosures.

I have here a reply from the Attorney General:

MAY 13, 1954.

HON. KARL E. MUNDT,

United States Senate, Washington, D. C.:

In reply to your letter of May 10, 1954, for the reasons set forth in my letter of May 6, it is my opinion that it would not be in the public interest to release the 2¼-page document which purports to be a copy of a letter or to release any part thereof.

As I pointed out, the document is not authentic in that no such letter was written by Mr. J. Edgar Hoover. The portions of this document which were taken verbatim from the 15-page interdepartmental FBI memorandum dated January 26, 1951, by an unidentified person are classified "confidential" by law; this means they must not be disclosed "in the best interests of the national security."

If the "confidential" classification of the FBI reports and memoranda is not respected, serious and irreparable harm will be done to the FBI. This principle applies with equal force to the release of portions of the FBI memorandum which are contained in the 2¼-page document as well as to the memorandum as a whole.

The Department has under consideration at the present time possible violations of criminal law as a result of the referral of the transcript of the hearings to the Department by your subcommittee. The 2¼-page document is involved, and its declassification at this time might affect adversely or even defeat the proper prosecution of offenses involved in its preparation and dissemination. This consideration confirms my original opinion that it would not be in the public interest to declassify the document or any part of it at the present time.

Sincerely,

HERBERT BROWNELL, Jr.,
Attorney General.

Mr. Mundt again in his own words:

I ask that my letter in full, and the Attorney General's letter in full, be entered at this point in the record, and properly identified.

And in parentheses:

The letter from the Attorney General was marked "Exhibit No. 19" and received in evidence.

End of parentheses.

Again reverting to the stenographic transcript, this time volume No. 34, pages 6722 and 6723:

Senator JACKSON. All right, we won't go into any further detail about that. When did you first see the 2¼-page FBI document?

Mr. CARR. I believe—I believe that I first saw the two and a—what is it, 2¼-page document?—in this courtroom, or just before that, just the day that Mr. McCarthy handed it up here, or attempted to have the Chair read it.

Senator JACKSON. You had never seen it before?

Mr. CARR. I had never seen it. I knew about it, however.

Senator JACKSON. So it was never in the files?

Mr. CARR. It was never in the files downstairs; no, sir.

Senator JACKSON. How could you conduct this investigation? You are the staff director, and if you hadn't seen it until the day you came in, how could you have conducted this investigation without having seen that document?

Mr. CARR. I didn't have to see the document, sir. I know what was in it.

Further in the stenographic testimony of the same hearing for June 17, volume 36, at pages 7270 and 7271:

Mr. WELCH. Where do you keep the documents like the 2¼-page document that we had here?

Senator MCCARTHY. Mr. Welch, I was of the opinion that was down in the committee files. However, I heard Mr. Carr testify to the effect that it was not; that it was in my office. I will take Mr. Carr's testimony on that, because I am sure he is right in that.

Mr. WELCH. That you would consider an important document; would you not?

Senator MCCARTHY. Important, but not important beyond many documents we get.

Mr. WELCH. You wouldn't allow it to lie around carelessly, would you, Senator?

Senator MCCARTHY. It did not lie around carelessly.

Mr. WELCH. I want to ask about that. Have you a safe in your office?

Senator MCCARTHY. I have.

Mr. WELCH. Was that document kept in that safe?

Senator MCCARTHY. Apparently it was, Mr. Welch. May I say, I wasn't aware of that until I heard Mr. Carr testify to that, and I checked with Mrs. Driscoll and she tells me that document was in my safe rather than in the committee files.

Mr. WELCH. In your safe, sir?

Senator MCCARTHY. Yes.

Mr. WELCH. May I ask who has access to your safe; others than you, or not?

Senator MCCARTHY. My administrative assistant has access. Mrs. Driscoll has. I, of course, have. I don't think anyone else has the combination.

Mr. Chairman, that concludes the factual matter in connection with the subject matter to which we have been directing our attention.

My brief, of course, contains some memorandums of law, but I have already made a request to you that this material might be presented by the staff in carefully prepared and revised documentary form, rather than as it is in our briefs, which we will do, giving a copy of that paper to Mr. Williams. And we hope that it may be made part of the record without the necessity of needing it here.

Mr. WILLIAMS. May we have that today, Mr. Chadwick?

Mr. CHADWICK. I do not think I can supply it today.

Mr. WILLIAMS. All right.

The CHAIRMAN. I understand, Mr. Chadwick, it will probably be next Tuesday before you can give that material.

Mr. CHADWICK. Yes, sir.

The CHAIRMAN. And I assume that you will want some additional time in which to prepare such items with respect to the law as you have already indicated you want for the record?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. The Chair recognizes the fact that it is a long and laborious job to prepare these briefs, and to carefully check the authorities and the precedents and for that reason I think that any reasonable time should be granted either counsel for the committee or counsel for Mr. McCarthy in which to do that job.

Mr. CHADWICK. Such briefs of the law will contain all reference to all Federal directives that we identify as having application. We might read them here, and we may read them when we file our report, if we deem it fit, but I suggest that we better not read it now until we have had a chance to review that situation, Mr. Chairman.

Mr. WILLIAMS. If we could have even a rough draft of that prior to Tuesday, I think that we might be able to file our brief by Tuesday or Wednesday in reply thereto.

I assume that you have reference to those legal matters that Senator Case called to our attention this morning?

Mr. CHADWICK. Yes, sir; matters that we have heretofore referred to at the close of the reading of the brief on various points. And that is a reasonable request. We can give it to you in the rough without the extension of material, because we will give you these citations in support thereof.

Mr. WILLIAMS. Thank you.

Senator CARLSON. May I ask if the request that Senator Case made this morning contained a request for Executive Order No. 10450, which deals with the security requirements of Government employment and, also, the Presidential directive of March 13, 1948, which deals with the confidential status of employees. It seems to me that should be a part of these hearings, if it is not already.

Mr. CHADWICK. Yes, sir; we quite agree. It will be made a part of that.

The CHAIRMAN. I take it that counsel is going to search for all of the precedents, all of the sections of the code, all of the rules of the Senate or any interpretations thereof that have anything to do with this matter.

Mr. CHADWICK. We will do our very best, Mr. Chairman.

The CHAIRMAN. That includes the Presidential directives, and anything of a legal nature that may throw some light on these controversies, that is, on these issues raised in this hearing?

Mr. CHADWICK. That will be our purpose, and it is our understanding of our instructions.

The CHAIRMAN. Is there anything further that you have to offer in a factual way at this time?

Mr. CHADWICK. No, sir.

The CHAIRMAN. This is rather early in the day. The committee has been looking for a time when it could hold a rather extended executive session. There are matters of law to be cleared up and matters of investigation yet to be finished and to receive reports on some

that are underway, so that the committee appreciates getting the rest of the afternoon to work out such matters, in which to hold such a meeting.

As I said yesterday, some members of the committee at least will attend the funeral tomorrow in South Carolina, and that will make it impossible for us to go ahead with the hearing.

The hearings will resume next Tuesday morning at 10 o'clock, and in this same room.

Mr. WILLIAMS. Do you want us at this meeting?

The CHAIRMAN. We have some internal work with respect to the committee's activities. If you have anything to suggest, Mr. Williams, either you or Senator McCarthy, that will be helpful in getting all of the facts in the record—in getting all of the law pertinent to this matter in the record—we would be very glad to meet with you for that purpose.

We do not have any other objective in mind, however.

Mr. WILLIAMS. Thank you.

The CHAIRMAN. The committee will now stand in recess until next Tuesday morning at 10 o'clock.

(Whereupon, at 3:10 p. m., the committee recessed, to reconvene at 10 a. m., Tuesday, September 7, 1954.)



HEARINGS ON SENATE RESOLUTION 301

TUESDAY, SEPTEMBER 7, 1954

UNITED STATES SENATE,
SELECT COMMITTEE TO STUDY CENSURE CHARGES
PURSUANT TO SENATE ORDER ON SENATE RESOLUTION 301,
Washington, D. C.

The select committee met, pursuant to recess, at 10:14 a. m., in the caucus room, 318 Senate Office Building, Senator Arthur V. Watkins (chairman) presiding.

Present: Senators Watkins (chairman), Johnson (vice chairman), Carlson, Case, Stennis, and Ervin.

Also present: Senator McCarthy; E. Wallace Chadwick, counsel to the committee; Guy G. de Furia, assistant counsel to the committee; John M. Jex, clerk of the committee; John W. Wellman, staff member; Frank Ginsberg and Ray R. McGuire, members of Senator Watkins' staff on loan to the committee; and Edward Bennett Williams, counsel to Senator McCarthy, with his associates, Agnes A. Neill and Brent Bozell.

The CHAIRMAN. The committee will resume session.

Confirming a committee purpose, which I mentioned at a previous hearing, judicial or legislative notice will be taken by this committee of the report of the Henning-Hayden-Hendrickson Subcommittee on Privileges and Elections of the Committee on Rules and Administration relating to the investigation directed against Senators Joseph R. McCarthy and William Benton, pursuant to Senate Resolution 187 and Senate Resolution 304, in the 82d Congress; for the limited purpose of showing the nature (but not to establish the truth or falsity) of the charges before that subcommittee, as bearing upon the question of jurisdiction of that subcommittee.

That report will be made a part of this record, and will appear as appendix No. III.

This committee will also take legislative notice of the letter from the President to the Secretary of defense, dated May 17, 1954, and of the memorandum of law from the Attorney General to the President, accompanying the same. The counsel will offer said letter and memorandum in evidence by copies thereof, and will read the letter into the record. The memorandum will be marked as an exhibit and included as part of the record without reading.

You may proceed, Mr. Chadwick.

Mr. CHADWICK. Mr. Chairman, I offer in evidence a letter of the President of the United States to the Secretary of Defense, dated May 17, 1954, which I will read for the purposes and into the record as you direct.

The CHAIRMAN. The Chair has already directed that you read it into the record. I have already taken judicial notice of that document. You may proceed, Mr. Chadwick.

Mr. CHADWICK. The letter reads as follows:

DEAR MR. SECRETARY: It has long been recognized that to assist the Congress in achieving its legislative purposes every executive department or agency must, upon the request of a congressional committee, expeditiously furnish information relating to any matter within the jurisdiction of the committee, with certain historical exceptions—some of which are pointed out in the attached memorandum from the Attorney General. This administration has been and will continue to be diligent in following this principle. However, it is essential to the successful working of our system that the persons entrusted with power in any 1 of the 3 great branches of Government shall not encroach upon the authority confided to the others. The ultimate responsibility for the conduct of the executive branch rests with the President.

Within this constitutional framework each branch should cooperate fully with each other for the common good. However, throughout our history the President has withheld information whenever he found that what was sought was confidential or its disclosure would be incompatible with the public interest or jeopardize the safety of the Nation.

Because it is essential to efficient and effective administration that employees of the executive branch to be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations or communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the subcommittee of the Senate Committee on Government Operations regarding the inquiry now before if they are not to testify to any such conversations or communications or to produce any such documents or reproductions. This principle must be maintained regardless of who would be benefited by such disclosures.

I direct this action so as to maintain the proper separation of powers between the executive and legislative branches of the Government in accordance with my responsibilities and duties under the Constitution. This separation is vital to preclude the exercise of arbitrary power by any branch of the Government.

By this action I am not in any way restricting the testimony of such witnesses as to what occurred regarding any matters where the communication was directly between any of the principals in the controversy within the executive branch on the one hand and a member of the subcommittee or its staff on the other.

Sincerely,

(Signed) DWIGHT D. EISENHOWER.

This letter is addressed to the honorable the Secretary of Defense, Washington, D. C. This letter was dated May 17, 1954.

Mr. WILLIAMS. Mr. Chairman.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. I understood that order as read by Mr. Chadwick pertains solely and exclusively to the committee of which Senator Mundt was chairman, which functioned earlier this year.

Now, I was wondering what relative purpose this introduction had here. I thought Mr. Chadwick might help us on that.

The CHAIRMAN. Mr. Chadwick.

Mr. CHADWICK. As I catch the question, it is the limitation on a certain matter to prove a certain case. Mr. Williams, I think the document speaks for itself.

Mr. WILLIAMS. It does to me, Mr. Chadwick. It speaks very clearly that it has applicability only to the Mundt committee. I wondered what its purpose was in this hearing.

Mr. CHADWICK. The purpose is to supplement the other testimony which has been read as evidence heretofore or which may be adduced hereafter with reference to the utilization, use, transmission, disclosure of classified documents or other communications, interdepartmental communications which are confidential under this directive.

Senator CASE. Mr. Chairman?

The CHAIRMAN. Senator Case.

Senator CASE. Will counsel state whether or not this letter from the President went to the so-called Mundt committee before or after, and was it written or issued by the President before or after the alleged invitation by Senator McCarthy to Government employees with respect to the furnishing of certain information?

Mr. CHADWICK. My best recollection, sir, is that it followed that, that it was immediately contemporaneous with it. Whether it was immediately before or immediately after, I cannot say without reference to the record.

Senator CASE. The dates, I assume, do appear in the record.

Mr. CHADWICK. They do, sir. I call the attention of the stenographer, and ask him to mark as a committee exhibit a memorandum 10 pages in length to the President from the Attorney General which was attached to and in support of the Presidential order which I have just read into the record. I ask him to advise me what number to give to the document. We understand that it is exhibit No. 3. It is offered in evidence as part of the record in this case.

The CHAIRMAN. The Chair has already ruled the exhibit will be marked as a memorandum and be included as a part of the record at this point.

MEMORANDUM

For: The President.

From: The Attorney General.

One of the chief merits of the American system of written constitutional law is that all the powers entrusted to the Government are divided into three great departments, the executive, the legislative, and the judicial. It is essential to the successful working of this system that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall be limited to the exercise of the powers appropriate to its own department and no other. The doctrine of separation of powers was adopted to preclude the exercise of arbitrary power and to save the people from autocracy.

This fundamental principle was fully recognized by our first President, George Washington, as early as 1796 when he said: " * * * it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved * * *." In his Farewell Address, President Washington again cautioned strongly against the danger of encroachment by one department into the domain of another as leading to despotism. This principle has received steadfast adherence throughout the many years of our history and growth. More than ever, it is our duty today to heed these words if our country is to retain its place as a leader among the free nations of the world.

For over 150 years—almost from the time that the American form of government was created by the adoption of the Constitution—our Presidents have established, by precedent, that they and members of their Cabinet and other heads of executive departments have an undoubted privilege and discretion to keep confidential, in the public interest, papers and information which require secrecy. American history abounds in countless illustrations of the refusal, on occasion, by the President and heads of departments to furnish papers to Congress, or its committees, for reasons of public policy. The messages of our past Presidents reveal that almost every one of them found it necessary to inform Congress of his constitutional duty to execute the office of President, and, in furtherance of that duty, to withhold information and papers for the public good.

Nor are the instances lacking where the aid of a court was sought in vain to obtain information or papers from a President and the heads of departments. Courts have uniformly held that the President and the heads of departments have an uncontrolled discretion to withhold the information and papers in the public interest; they will not interfere with the exercise of that discretion, and

that Congress has not the power, as one of the three great branches of the Government, to subject the executive branch to its will any more than the executive branch may impose its unrestrained will upon the Congress.

PRESIDENT WASHINGTON'S ADMINISTRATION

In March 1792, the House of Representatives passed the following resolution: "*Resolved*, That a committee be appointed to inquire into the causes of the failure of the late expedition under Major General St. Clair; and that the said committee be empowered to call for such persons, papers, and records, as may be necessary to assist their inquiries." (3 Annals of Congress, p. 493.)

This was the first time that a committee of Congress was appointed to look into a matter which involved the executive branch of the Government. The expedition of General St. Clair was under the direction of the Secretary of War. The expenditures connected therewith came under the Secretary of the Treasury. The House based its right to investigate on its control of the expenditures of public moneys. It appears that the Secretaries of War and the Treasury appeared before the committee. However when the committee was bold enough to ask the President for the papers pertaining to the General St. Clair campaign, President Washington called a meeting of his Cabinet (Binkley, President and Congress pp. 40-41).

Thomas Jefferson, as Secretary of State, reports what took place at that meeting. Besides Jefferson, Alexander Hamilton, Henry Knox, Secretary of War, and Edmond Randolph, the Attorney General, were present. The committee had first written to Knox for the original letters, instructions, etc., to General St. Clair. President Washington stated that he had called his Cabinet members together, because it was the first example of a demand on the Executive for papers, and he wished that so far as it should become a precedent, it should be rightly conducted. The President readily admitted that he did not doubt the propriety of what the House was doing, but he could conceive that there might be papers of so secret a nature, that they ought not to be given up. Washington and his Cabinet came to the unanimous conclusion:

"First, that the House was an inquest, and therefore might institute inquiries. Second, that it might call for papers generally. Third, that the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public; consequently were to exercise a discretion. Fourth, that neither the committee nor House had a right to call on the Head of a Department, who and whose papers were under the President alone; but that the committee should instruct their chairman to move the House to address the President."

The precedent thus set by our first President and his Cabinet was followed in 1796, when President Washington was presented with a resolution of the House of Representatives which requested him to lay before the House a copy of the instructions to the Minister of the United States who negotiated the treaty with the King of Great Britain, together with the correspondence and documents relative to that treaty. Apparently it was necessary to implement the treaty with an appropriation which the House was called upon to vote. The House insisted on its right to the papers requested, as a condition to appropriating the required funds. (President and Congress, Wilfred E. Binkley (1947), p. 44).

President Washington's classic reply was, in part, as follows:

"I trust that no part of my conduct has ever indicated a disposition to withhold any information which the Constitution has enjoined upon the President as a duty to give, or which could be required of him by either House of Congress as a right; and with truth I affirm that it has been, as it will continue to be while I have the honor to preside in the Government, my constant endeavor to harmonize with the other branches thereof so far as the trust delegated to me by the people of the United States and my sense of the obligation it imposes to 'preserve, protect, and defend the Constitution' will permit" (Richardson's Messages and Papers of the Presidents, vol. 1, p. 194).

Washington then went on to discuss the secrecy required in negotiations with foreign governments, and cited that as a reason for vesting the power of making treaties in the President, with the advice and consent of the Senate. He felt that to admit the House of Representatives into the treatymaking power, by reason of its constitutional duty to appropriate moneys to carry out a treaty, would be to establish a dangerous precedent. He closed his message to the House as follows:

"As, therefore, it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty; * * * and as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbids a compliance with your request" (Richardson's Messages and Papers of the Presidents, vol. 1, p. 196).

PRESIDENT JEFFERSON'S ADMINISTRATION

In January 1807, Representative Randolph introduced a resolution, as follows: "*Resolved*, That the President of the United States be, and he hereby is, requested to lay before this House any information in possession of the Executive, except such as he may deem the public welfare to require not to be disclosed, touching any illegal combination of private individuals against the peace and safety of the Union, or any military expedition planned by such individuals against the territories of any power in amity with the United States; together with the measures which the Executive has pursued and proposes to take for suppressing or defeating the same" (16 Annals of Congress (1806-1807), p. 336).

The resolution was overwhelmingly passed. The Burr conspiracy was then stirring the country. Jefferson had made it the object of a special message to Congress wherein he referred to a military expedition headed by Burr. Jefferson's reply to the resolution was a message to the Senate and House of Representatives. Jefferson brought the Congress up to date on the news which he had been receiving concerning the illegal combination of private individuals against the peace and safety of the Union. He pointed out that he had recently received a mass of data, most of which had been obtained without the sanction of an oath so as to constitute formal and legal evidence. "It is chiefly in the form of letters, often containing such a mixture of rumors, conjectures, and suspicions as renders it difficult to sift out the real facts and unadvisable to hazard more than general outlines, strengthened by concurrent information or the particular credibility of the relator. In this state of the evidence, delivered sometimes too under the restriction of private confidence, neither safety nor justice will permit the exposing names, except that of the principal actor, whose guilt is placed beyond question" (Richardson's Messages and Papers of the Presidents, vol. 1, p. 412, dated January 22, 1807).

SIMILAR ACTIONS BY PRESIDENTS JACKSON, TYLER, BUCHANAN, AND GRANT

On February 10, 1835, President Jackson sent a message to the Senate wherein he declined to comply with the Senate's resolution requesting him to communicate copies of charges which had been made to the President against the official conduct of Gideon Fitz, late surveyor-general, which caused his removal from office. The resolution stated that the information requested was necessary both in the action which it proposed to take on the nomination of a successor to Fitz, and in connection with the investigation which was then in progress by the Senate respecting the frauds in the sales of public lands.

The President declined to furnish the information. He stated that in his judgment the information related to subjects exclusively belonging to the executive department. The request therefore encroached on the constitutional powers of the Executive.

The President's message referred to many previous similar requests, which he deemed unconstitutional demands by the Senate:

"Their continued repetition imposes on me, as the representative and trustee of the American people, the painful but imperious duty of resisting to the utmost any further encroachment on the rights of the Executive" (*ibid.*, p. 133).

The President next took up the fact that the Senate resolution had been passed in executive session, from which he was bound to presume that if the information requested by the resolution were communicated, it would be applied in secret session to the investigation of frauds in the sales of public lands. The President said that, if he were to furnish the information, the citizen whose conduct the Senate sought to impeach would lose one of his basic rights, namely, that of a public investigation in the presence of his accusers and of the witnesses against him. In addition, compliance with the resolution would subject the motives of the President, in the case of Mr. Fitz, to the review of the Senate when not sitting as judges on an impeachment; and even if such a consequence did not follow in the present case, the President feared that compliance by the

Executive might thereafter be quoted as a precedent for similar and repeated applications.

"Such a result, if acquiesced in, would ultimately subject the independent constitutional action of the Executive in a matter of great national concernment to the domination and control of the Senate; * * *

"I therefore decline a compliance with so much of the resolution of the Senate as requests 'copies of the charges, if any,' in relation to Mr. Fitz, and in doing so must be distinctly understood as neither affirming nor denying that any such charges were made; * * *'" (ibid. p. 134).

One of the best reasoned precedents of a President's refusal to permit the head of a department to disclose confidential information to the House of Representatives is President Tyler's refusal to communicate to the House of Representatives the reports relative to the affairs of the Cherokee Indians and to the frauds which were alleged to have been practiced upon them. A resolution of the House of Representatives had called upon the Secretary of War to communicate to the House the reports made to the Department of War by Lieutenant Colonel Hitchcock relative to the affairs of the Cherokee Indians together with all information communicated by him concerning the frauds he was charged to investigate; also all facts in the possession of the Executive relating to the subject. The Secretary of War consulted with the President and under the latter's direction informed the House that negotiations were then pending with the Indians for settlement of their claims; in the opinion of the President and the Department, therefore, publication of the report at that time would be inconsistent with the public interest. The Secretary of War further stated in his answer to the resolution that the report sought by the House, dealing with alleged frauds which Lieutenant Colonel Hitchcock was charged to investigate, contained information which was obtained by Colonel Hitchcock by ex parte inquiries of persons whose statements were without the sanction of an oath, and which the persons implicated had had no opportunity to contradict or explain. The Secretary of War expressed the opinion that to promulgate those statements at that time would be grossly unjust to those persons, and would defeat the object of the inquiry. He also remarked that the Department had not been given at that time sufficient opportunity to pursue the investigation, to call the parties affected for explanations, or to determine on the measures proper to be taken.

The answer of the Secretary of War was not satisfactory to the Committee on Indian Affairs of the House, which claimed the right to demand from the Executive and heads of departments such information as may be in their possession relating to subjects of the deliberations of the House.

President Tyler in a message dated January 31, 1843, vigorously asserted that the House of Representatives could not exercise a right to call upon the Executive for information, even though it related to a subject of the deliberations of the House, if, by so doing, it attempted to interfere with the discretion of the Executive.

The same course of action was taken by President James Buchanan in 1860 in resisting a resolution of the House to investigate whether the President or any other officer of the Government had, by money, patronage or other improper means sought to influence the action of Congress for or against the passage of any law relating to the rights of any State or Territory (see Richardson, "Messages and Papers of the Presidents," vol. 5, pp. 618-619).

In the administration of President Ulysses S. Grant, the House requested the President to inform it whether any executive offices, acts, or duties, and if any, what, have been performed at a distance from the seat of government established by law. It appears that the purpose of this inquiry was to embarrass the President by reason of his having spent some of the hot months at Long Branch. President Grant replied that he failed to find in the Constitution the authority given to the House of Representatives, and that the inquiry had nothing to do with legislation (Richardson, Messages and Papers of the Presidents, vol. VII, pp. 362-363).

PRESIDENT CLEVELAND'S ADMINISTRATION

In 1886, during President Cleveland's administration, there was an extended discussion in the Senate with reference to its relations to the Executive caused by the refusal of the Attorney General to transmit to the Senate certain documents concerning the administration of the office of the district attorney for the southern district of south Alabama, and suspension of George W. Durkin, the late incumbent. The majority of the Senate Committee on the Judiciary con-

cluded it was entitled to know all that officially exists or takes place in any of the departments of Government and that neither the President nor the head of a department could withhold official facts and information as distinguished from private and unofficial papers.

In his reply President Cleveland disclaimed any intention to withhold official papers, but he denied that papers and documents inherently private or confidential, addressed to the President or a head of a department, having reference to an act entirely executive such as the suspension of an official, were changed in their nature and became official when placed for convenience in the custody of a public department (Richardson, Messages and Papers of the Presidents, vol. 8, pp. 378-379, 381).

Challenging the attitude that because the executive departments were created by Congress the latter had any supervisory power over them, President Cleveland declared (Eberling, Congressional Investigation, p. 258):

"I do not suppose that the public offices of the United States are regulated or controlled in their relations to either House of Congress by the fact that they were created by laws enacted by themselves. It must be that these instrumentalities were created for the benefit of the people and to answer the general purposes of Government under the Constitution and the laws, and that they are unencumbered by any lien in favor of either branch of Congress growing out of their construction, and unembarrassed by any obligation to the Senate as the price of their creation."

PRESIDENT THEODORE ROOSEVELT'S ADMINISTRATION

In 1909, during the administration of President Theodore Roosevelt, the question of the right of the President to exercise complete direction and control over heads of executive departments was raised again. At that time the Senate passed a resolution directing the Attorney General to inform the Senate whether certain legal proceedings had been instituted against the United States Steel Corp., and if not, the reasons for its nonaction. Request was also made for any opinion of the Attorney General, if one was written. President Theodore Roosevelt replied, refusing to honor this request upon the ground that "heads of the executive departments are subject to the Constitution, and to the laws passed by the Congress in pursuance of the Constitution, and to the directions of the President of the United States, but to no other direction whatever" (Congressional Record, vol. 43, pt. 1, 60th Cong., 2d sess., pp. 527-528).

When the Senate was unable to get the documents from the Attorney General, it summoned Herbert K. Smith, the head of the Bureau of Corporations, and requested the papers and documents on penalty of imprisonment for contempt. Mr. Smith reported the request to the President, who directed him to turn over to the President all the papers in the case "so that I could assist the Senate in the prosecution of its investigation." President Roosevelt then informed Senator Clark, of the Judiciary Committee, what had been done, that he had the papers and the only way the Senate could get them was through his impeachment. President Roosevelt also explained that some of the facts were given to the Government under the seal of secrecy and cannot be divulged, "and I will see to it that the word of this Government to the individual is kept sacred" (Corwin, The President—Office and Powers, pp. 281, 428; Abbott, "The Letters of Archie Butt, Personal Aide to President Roosevelt," pp. 305-306).

PRESIDENT COOLIDGE'S ADMINISTRATION

In 1924, during the administration of President Coolidge, the latter objected to the action of a special investigating committee appointed by the Senate to investigate the Bureau of Internal Revenue. Request was made by the committee for a list of the companies in which the Secretary of the Treasury was alleged to be interested for the purpose of investigating their tax returns. Calling this exercise of power an unwarranted intrusion, President Coolidge said:

"Whatever may be necessary for the information of the Senate or any of its committees in order to better enable them to perform their legislative or other constitutional functions ought always to be furnished willingly and expeditiously by any department. But it is recognized both by law and custom that there is certain confidential information which it would be detrimental to the public service to reveal" (68th Cong., 1st sess., Record, Apr. 11, 1924, p. 6087).

PRESIDENT HOOVER'S ADMINISTRATION

A similar question arose in 1930 during the administration of President Hoover. Secretary of State Stimson refused to disclose to the chairman of the Senate Foreign Relations Committee certain confidential telegrams and letters leading up to the London Conference and the London Treaty. The committee asserted its right to have full and free access to all records touching the negotiations of the treaty, basing its right on the constitutional prerogative of the Senate in the treatymaking process. In his message to the Senate, President Hoover pointed out that there were a great many informal statements and reports which were given to the Government in confidence. The Executive was under a duty, in order to maintain amicable relations with other nations, not to publicize all the negotiations and statements which went into the making of the treaty. He further declared that the Executive must not be guilty of a breach of trust, nor violate the invariable practice of nations. "In view of this, I believe that to further comply with the above resolution would be incompatible with the public interest" (S. Doc. No. 216, 71st Cong., special sess., p. 2).

PRESIDENT FRANKLIN D. ROOSEVELT'S ADMINISTRATION

The position was followed during the administration of President Franklin D. Roosevelt. There were many instances in which the President and his executive heads refused to make available certain information to Congress the disclosure of which was deemed to be confidential or contrary to the public interest. Merely a few need be cited.

1. Federal Bureau of Investigation records and reports were refused to congressional committees, in the public interest (40 Op. Atty. Gen. No. 8, Apr. 30, 1941).

2. The Director of the Federal Bureau of Investigation refused to give testimony or to exhibit a copy of the President's directive requiring him, in the interests of national security, to refrain from testifying or from disclosing the contents of the Bureau's reports and activities (hearings, vol. 2, House, 78th Cong., Select Committee To Investigate the Federal Communications Commission (1944), p. 2337).

3. Communications between the President and the heads of departments were held to be confidential and privileged and not subject to inquiry by a committee of one of the Houses of Congress (letter dated January 22, 1944, signed Francis Biddle, Attorney General, to select committee, etc.).

4. The Director of the Bureau of the Budget refused to testify and to produce the Bureau's files, pursuant to subpoena which had been served upon him, because the President had instructed him not to make public the records of the Bureau due to their confidential nature. Public interest was again invoked to prevent disclosure. (Reliance placed on Attorney General's opinion in 40 Op. Atty. Gen. No. 8, Apr. 30, 1941.)

5. The Secretaries of War and Navy were directed not to deliver documents which the committee had requested, on grounds of public interest. The Secretaries, in their own judgment, refused permission to Army and Navy officers to appear and testify because they felt that it would be contrary to the public interests (hearings, Select Committee To Investigate the Federal Communications Commission, vol. 1, pp. 46, 48-68).

PRESIDENT TRUMAN'S ADMINISTRATION

During the Truman administration also the President adhered to the traditional Executive view that the President's discretion must govern the surrender of Executive files. Some of the major incidents during the administration of President Truman in which information, records, and files were denied to congressional committees were as follows:

<i>Date</i>	<i>Type of document refused</i>
Mar. 4, 1948-----	FBI letter-report on Dr. Condon, Director of National Bureau of Standards, refused by Secretary of Commerce.
Mar. 15, 1948-----	President issued directive forbidding all executive departments and agencies to furnish information or reports concerning loyalty of their employees to any court or committee of Congress, unless President approves.

- March 1948----- Dr. John R. Steelman, confidential adviser to the President, refused to appear before Committee on Education and Labor of the House, following the service of 2 subpoenas upon him. President directed him not to appear.
- Aug. 5, 1948----- Attorney General wrote Senator Ferguson, chairman of Senate Investigations Subcommittee, that he would not furnish letters, memoranda, and other notices which the Justice Department had furnished to other Government agencies concerning W. W. Remington.
- Feb. 22, 1950----- S. Res. 231 directing Senate subcommittee to procure State Department loyalty files was met with President Truman's refusal, following vigorous opposition of J. Edgar Hoover.
- Mar. 27, 1950----- Attorney General and Director of FBI appeared before Senate subcommittee. Mr. Hoover's historic statement of reasons for refusing to furnish raw files approved by Attorney General.
- May 16, 1951----- General Bradley refused to divulge conversations between President and his advisers to combine Senate Foreign Relations and Armed Services Committees.
- Jan. 31, 1952----- President Truman directed Secretary of State to refuse to Senate Internal Security Subcommittee the reports and views of foreign service officers.
- Apr. 22, 1952----- Acting Attorney General Perlman laid down procedure for complying with requests for inspection of Department of Justice files by Committee on the Judiciary:
- Requests on open cases would not be honored. Status report will be furnished. As to closed cases, files would be made available. All FBI reports and confidential information would not be made available.
- As to personnel files, they are never disclosed.
- Apr. 3, 1952----- President Truman instructed Secretary of State to withhold from Senate Appropriations Subcommittee files on loyalty and security investigations of employees—policy to apply to all executive agencies. The names of individuals determined to be security risks would not be divulged. The voting record of members of an agency loyalty board would not be divulged.

Thus, you can see that the Presidents of the United States have withheld information of executive departments or agencies whenever it was found that the information sought was confidential or that its disclosure would be incompatible with the public interest or jeopardize the safety of the Nation. The courts too have held that the question whether the production of the papers was contrary to the public interest, was a matter for the Executive to determine.

By keeping the lines which separate and divide the three great branches of our Government clearly defined, no one branch has been able to encroach upon the powers of the other.

Upon this firm principle of our country's strength, liberty, and democratic form of government will continue to endure.

Mr. WILLIAMS. Mr. Chairman.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. I don't want to object to the admission of this, and I think I can avoid any objection by stipulation which I am sure Mr. Chadwick will enter into, namely, that that letter of May 17, 1954,

from the President to the Secretary of Defense laid down a rule which had applicability only to the Mundt committee and it did not have general applicability to the Government Operations Committee, of which Senator McCarthy is chairman. It related solely and exclusively to the specific hearing which was being conducted under the chairmanship of Senator Mundt, of South Dakota, and had no relevancy or applicability to any other hearing or any other committee function.

Mr. CHADWICK. Mr. Williams, I stated I could not affirm that fact because I am not authorized and have no power to construe, limit the effect of an order of the President. It is manifestly, on its face, related to the matters in question.

Mr. WILLIAMS. To the matters?

Mr. CHADWICK. Whether it goes further, sir, I cannot limit it by any stipulation which I would enter into.

The CHAIRMAN. May I say, gentlemen, that we will check that matter further in the light of what Mr. Williams has now called to our attention and if it should appear to be irrelevant and immaterial to the present issue and has no bearing on it, it will be excluded.

Mr. CHADWICK. Mr. Chairman, I submit to you herewith a brief prepared by the staff summarizing the pertinent cases, rules, Presidential orders, and directives and other legal matters, which will be cited and relied upon by the staff in support of the propositions developed before the committee.

We request and suggest that it shall be printed as a supplement to the record, subject to additions and corrections.

This brief is not submitted as testimony, but is convenient reference material for the committee and Senate and any other interested persons.

A copy of this brief has been supplied to Mr. Williams.

The CHAIRMAN. I take it from your statement it could be proved. That seems to be proper.

Mr. CHADWICK. May I proceed, sir, to cite the headings of this brief and such matters therein as seem pertinent to read into the record now for the immediate information of the committee?

The CHAIRMAN. You may.

We do not want you to read the whole brief, but you may cite the material therein.

Mr. CHADWICK. This is submitted as pertaining to law relating to specifications I to V, inclusive, the specifications being those adopted in the notice which the chairman gave before the commencement of these hearings.

With respect to part I, which is contempt of Senate or committee, we call attention to the Legislative Reorganization Act of 1945, Public Law 601, and section 102 thereof for standing committees of the Senate.

We have referred and read into the record and reference has been made to Senate Resolution 187 of the 82d Congress, the 1st session, introduced by Senator Benton of Connecticut and referred on August 6, 1951—and I shall not read all the material which follows. It is available for the committee, for Mr. Williams, and for the record.

We have reached the conclusion that it is not necessary to determine whether the Gillette-Hennings subcommittee had or had not the power to subpoena Senator McCarthy. He did not demand a sub-

pena and no subpena was issued. It was clear the subcommittee had the power to request his appearance other than by subpena.

The jurisdiction of the Subcommittee on Privileges and Elections was not limited to the conduct of Senator McCarthy connected with elections, but the jurisdiction of that subcommittee extended to acts totally unconnected with election matters, but which were relevant in inquiries relating to expulsion, exclusion, and censure.

We call attention to the Congressional Record of the Senate of April 8, 1952, at page 3701; also at pages 3753 to 3756.

We call attention to the purpose of the introduction of Senate Resolution 300, 82d Congress, 2d session, by Senator Hayden, on April 8, 1952, as shown by the Congressional Record and the senatorial debate, that it was to affirm or deny the contention of Senator McCarthy that the Subcommittee on Privileges and Elections lacked jurisdiction to investigate such acts of the Senator from Wisconsin as were not connected with elections and campaigns, as well as to bring before the Senate the charges of Senator McCarthy reflecting upon the honesty and sincerity of the members of the subcommittee.

The matter of the Senate vote on that is referred to.

On the question of the nature of the Senate as a continuing body, the contention has been made that the Senate is not a continuing body and that the incidents under category I, relating to contempt of the Senate or a senatorial committee, cannot be inquired into by the select committee under the authority of at least three cases cited. Those cases are:

Anderson v. Dunn in 6 Wheaton, 204;

Journey v. McCracken (294 U. S. 125);

United States v. Bryan (339 U. S. 323).

All cases were cited by Mr. Williams in oral argument or statement before this committee.

This statement by counsel implies that the Senate may censure a member only when he is guilty of contempt.

Counsel for the committee does not believe there is any legal limitation to this effect and that there are acts on the part of a member of the Senate which may warrant his censure unrelated to any of contempt toward the Senate or one of its committees. Furthermore, the examination of the three cases cited shows that they are without direct application or control to this question.

We cite Senate Document No. 99 of the 83d Congress, 2d session, a document entitled "Congressional Power of Investigation." We have called attention to the fact that on page 7, while the rule with reference to the House, whose Members are all elected for a period of a single Congress, may be the same as in the case of the two Houses of Parliament, this rule cannot be the case with the Senate, which is a continuing body whose Members are elected for a term of 6 years and so divided into classes that the seats of one-third only become vacant at the end of each Congress, two-third always continuing into the next Congress.

The continuity of the Senate was questioned at the beginning of the 83d Congress and the issue was resolved in favor of the uniform precedents. See Senate rule XXXII, providing that the legislative business of the Senate shall be resumed and proceeded with as if no adjournment had taken place and all papers referred to committees and not reported upon at the close of a session of Congress shall be

delivered by the Secretary of the Senate to the several committees to which they had previously been referred.

We also call attention to the Senate debate in the Congressional Record of the Senate of January 6, 1953, pages 92 to 114.

We also call attention to Senate Document No. 4 of 1933, of the 83d Congress and to the case of *McGrain v. Doherty* (273 U. S. 135), at page 181. The date was 1927.

See also Senate rule XXV, page 42 (3).

D. Necessity of an oath before congressional committees:

In reference to the necessity of an oath before congressional committees, and the contention heretofore raised before this committee, we refer to page 18 of Senate Document No. 99, 83d Congress, 2d session, previously referred to, which states:

While the administration of an oath to a witness adds dignity to a congressional hearing, it is not essential—

since the Senate may make its own rules, even in censure or expulsion cases, and there is no rule requiring the administration of an oath to a witness, it is respectfully submitted that the point is not well taken.

On the general power of the Senate to censure one of its Members, article 1, section 5, clause 1, of the Constitution provides that each House shall be the judge of the elections, returns, and qualifications of its own Members.

Clause 2 of the same section provides that each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and with the concurrence of two-thirds expel a Member.

Senate rule XIX, clause 2, provides that no Senator in debate shall, directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator. These provisions are respectfully called to the attention of the select committee, not as limitations upon the extent of censurable conduct, but as perhaps pertinent to the present inquiry.

Part II. Law relating to invitation for and use of classified material:

In this connection we cite the statutory oath imposed upon employees of the Government generally and particularly as Senator Case asked us to make a reference to this as a part of the record. The oath of office is as follows:

1, ———, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office in which I am about to enter. So help me God. (5 U. S. 16.)

We assume, sir, for purposes of information of the committee, that the staff has been as yet unable to find that. A search of the statutes fails to disclose: (a) any provision for administering or any form of "security oath," or (b) any provision for or protection of "the chain of command of the civil service," referred to in amendment 14 proposed by Senator Flanders.

We cite the Espionage Act, United States Code chapter 37 on the subject Espionage and Censorship. I refer only to sections thereof which, of course, will be set out in full.

Title 18, section 793(d) covers "gathering, transmitting, or losing defense information."

The same section, 792, covers harboring or concealing any person "who he knows or has reasonable ground to believe or suspect, has committed or is about to commit, an offense under sections 793 or 794" of this article "shall be"—and there follows a statement of the penalty in connection therewith. (June 25, 1948, ch. 645, 62 Stat. 736.)

Of the pertinent subject with which we are dealing, and under the subhead "crimes, general provisions, misprision of felony," we cite United States Code, chapter I, title 18, section 4, which I shall read:

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined (penalty, etc.). (June 25, 1948, ch. 645, 62 Stat. 684.)

On the subject Disclosure of Confidential Information Generally, (18 U. S. Code, sec. 1905), reads:

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties * * * shall be—

and this is followed in the act by the statement of the penalty.

On the subject of Activities Affecting Armed Forces Generally, we cite the act of June 25, 1948, chapter 645, 62 Stat. c. 811, as amended May 24, 1949, chapter 139, section 46, 63 Stat. 96.

From that section, I read in more detail the provisions of section (b):

For the purposes of this section, the term "military or navel forces of the United States" includes the Army of the United States, the Navy, Air Force, Marine Corps, Coast Guard, Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve of the United States; and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel.

On the subject of Removal from Classified Civil Service, we cite an act which has been referred to heretofore in the hearings, or in the testimony. We call the attention of the committee to the last sentence of an act approved August 24, 1912 (37 Stat. 555, U. S. C. 5, 652 (d)), which reads:

The right of persons employed in the civil service of the United States, either individually or collectively to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with.

As I say, this has been cited before in the hearing, or in the testimony, upon which our evidence is based. We include it at this point, because we feel that this provision has little, if any, application to these hearings, because the act as an entirety refers to removals of persons from classified civil service for sufficient cause, and after due notice and written charges.

Furthermore, this act must be interpreted in the light of subsequent pertinent resolutions and Executive orders, under the heading "U. S. Code, Title 5, Section 22," which reads as follows:

The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

Senator CASE. Mr. Chadwick, do you know the date of that statute?

Mr. CHADWICK. I can get it in just a minute.

Senator CASE. I note that the date of the section you earlier read with reference to persons in the classified civil service was 1912, and that the date of the sections you read from the Espionage Act were various dates, principally June 25, 1948; but I think it would be helpful to have the date of the section you just read, too.

Mr. CHADWICK. We would be glad to have it now, sir, and inserted before the matter reaches the committee. It will take me a few minutes to get the date and if I may, I will proceed with the other matter and supply it as soon as we are able to do so.

Is that satisfactory, Senator Case?

Senator CASE. That is all right.

Mr. CHADWICK. Subhead H, Department of Justice Order No. 3229, counsel calls the attention of the committee to the Department of Justice order which was filed on May 2, 1946, 11 Federal Register 4920, 18 Federal Register 1369, which reads:

Pursuant to authority vested in me by Revised Statutes 161, United States Code title V, section 22, it is hereby ordered that all official files, documents, and records and information in the offices of the Department of Justice, including the several offices of the United States attorneys, Federal Bureau of Investigation, United States marshal, and Federal penal and correctional institutions, or in the custody or control of any officer or employee within the Department of Justice, are to be regarded as confidential.

No officer or employee may permit the disclosure or use of same for any purpose other than for the performance of his official duties except in the discretion of the Attorney General or Assistant Attorney General acting for him.

This order was held valid by the United States Supreme Court in *United States ex rel. Touhy v. Regan* (340, U. S. 462), in the year 1951.

But the subhead which is marked "I," we go at some length into the Presidential directive of March 13, 1948, 13 Federal Register 1359, under the title of Presidential directive, March 13, 1948, "Confidential Status of Employee Loyalty Report," a memorandum to all offices and employees of the Federal branch of the Government.

The directive contains these further orders:

This directive shall be published in the Federal Register and over the signature of Harry S. Truman. The date, March 13, 1948.

The above order apparently was in effect in May or June of 1953 when Senator McCarthy received the 2¼-page document, according to his statement in the Army-McCarthy hearing, and also at the time of his public invitation during those hearings.

We call attention, under subtitle J, to Executive Order 10290. Title 3, the President. Executive Order 10290 prescribing regulations and establishing minimum standards for the classification, transmission, and handling by departments and agencies of the executive branch of official information which requires safeguarding in the interest of the security of the United States.

I shall read the order in more detail:

Whereas it is necessary in order to protect the national security of the United States, to establish for the safeguarding of official information, the unauthorized disclosure of which would or could harm, tend to impair, or otherwise threaten the security of the Nation; and

Whereas it is desirable and proper that minimum standards for procedures designed to protect the national security against such unauthorized disclosure be uniformly applicable to all departments and agencies of the executive branch of the Government and be known to and understood by those who deal with the Federal Government; and

Whereas the furnishing of information to the public about Government activities will be facilitated by clear identification and marking of those matters, the safeguarding of which is required in the interest of national security;

Now, therefore, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States, the regulations attached hereto, entitled "Regulations Establishing Minimum Standards for the Classification, Transmission, and Handling, by Departments and Agencies of the Executive Branch, of Official Information Which Requires Safeguarding in the Interest of the Security of the United States," are hereby prescribed for application throughout the executive branch of the Government to the extent not inconsistent with law.

Such regulations shall take effect 30 days after their publication in the Federal Register.

All citizens of the United States who may have knowledge of or access to classified security information are requested to observe the standards established in such regulations with respect to such information and to join with the Federal Government in a concerted and continuing effort to prevent disclosure of such information to persons who are inimical to the interests of the United States.

That is signed by Harry S. Truman, the White House, September 24, 1951.

Mr. Chairman, the instrument itself is law and will have to be read by the committee with particularity, and it has no doubt been read by Mr. Williams. I will refrain from rereading it in its entirety.

Under title K we referred to Executive Order 10450 of April 27, 1953, title III, the President—Executive Order 10450, Security Requirements for Government Employment.

This order is signed by Dwight D. Eisenhower and dated April 27, 1953. It is as follows:

Whereas the interest of the national security requires that all persons privileged to be employed in their departments and agencies of the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States, and,

Whereas the American tradition that all persons should receive impartial and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be judged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service,

Now, therefore, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U. S. C. 631), the Civil Service Act of 1883 (22 Stat. 403, 5 U. S. C. 632, et seq.), section 9A of the act of April 2, 1939 (53 Stat. 1148, 5 U. S. C. 118j), and the act of August 26, 1950 (64 Stat. 476, 5 U. S. C. 2201 et seq.), and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

Section 1: In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951, the provisions of that act shall apply to all other departments and agencies of the Government.

Section 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and in no access shall be given thereto except, with the consent of the investigative agency concerned to other departments and agencies conducting security pro-

grams under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

Section 15: This order shall become effective 30 days after the date hereof.

The publication date of the order is Federal Register Document 50-3794, filed April 27, 1953, under an hour of 4:04 p. m.

This directive was apparently effective in May and June of 1953 and during the Army-McCarthy hearings.

Under the subheading "L" of Executive Order 10501 of November 5, 1953, "safeguarding official information in the interests of the defense of the United States" the subject matter of the order is quite lengthy.

I will content myself with reading only sections 18, 19, and 20 and over the signature of the President.

Section 18 is entitled, "Review Within Departments and Agencies."

It goes on to state:

The head of each department and agency shall designate a member or members of his staff who shall conduct a continuing review of the implementation of this order within the department or agency concerned to insure that no information is withheld hereunder which the people of the United States have a right to know, and to insure that classified defense information is properly safeguarded in conformity herewith.

Section 19: Revocation of Executive Order No. 102900.

Executive Order No. 10290 of September 24, 1951, is revoked as of the effective date of this order.

Section 20: Effective date. This order shall become effective on December 15, 1953.

This appears in Federal Register Docket 53-9553, filed November 9, 1953, under an hour of 9:55 a. m.

We refer to subheading "M" of the Constitution of the United States of America, revised and annotated 1952, Senate Document 170, 82d Congress, 2d session, page 82:

If Congress so provides, violation of valid administrative regulations may be provided as crimes. But the penalty must be provided in the statute itself. * * *

Mr. Chairman, referring to part III or category III of our presentation under this notice on the subject of "Abuse of Colleagues," we cite the United States Constitution, article I, section 6, clause 1:

The Senators and Representatives * * * for any speech or debate in either House shall not be questioned in any other place.

The constitutional clause is intended to protect the Members against suit or prosecution, not for their own benefit, but to enable the Representatives of the people to execute the functions of their office without fear. It is an absolute privilege and immunity against all but the House itself.

We cite Jefferson's Manual, section 3; Hind's Precedents of the House, 1907, section 1244, page 797; the Journal of the 1st session of the 39th Congress, May 14, 1866, page 695; Globe, page 2573; Hind's Precedents of the House, page 795.

The United States Constitution by article I, section 5, clause 2, provides:

Each House may determine the Rules of its Proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member.

Now, from the Standing Rules of the Senate, we cite rule XIX, section 2:

No Senator in debate shall, directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.

We refer to Jefferson's Manual, section XVII.

We refer to the Legislative Reorganization Act the powers of committee and government operations.

As to part 1, Standing Rules of the Senate, standing committees of the Senate, section 102 is as follows:

Rule XXV of the Standing Rules of the Senate is amended to read as follows:

"RULE XXV

"STANDING COMMITTEES

"(1) The following standing committees shall be appointed at the commencement of each Congress, with leave to report by bill or otherwise: * * *

"(g) (1) Committee on Government Operations, to consist of 13 Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"(A) Budget and accounting measures, other than appropriations.

"(B) Reorganizations in the executive branch of the Government.

"(2) Such committee shall have the duty of—

"(A) Receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports;

"(B) Studying the operation of Government activities at all levels with a view to determine its economy and efficiency;

"(C) Evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government;

"(D) Studying intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organizations of which the United States is a member."

As to part IV, "Procedure Before Investigating Committees," the first part of the discussion is with respect to the rights of witnesses before congressional committees.

We refer to Senate Document 99, 83d Congress, 2d session, filed 1954.

Under the subheading of "Disgracing and Inconveniencing Questions," there is a discussion on the rights and duties of witnesses.

Then on page 16 the right to counsel, the privilege of a witness to have advice of counsel depends upon the committee, and the rule has varied a good deal.

There are some citations at length on the subject.

On page 17, under the heading of cross-examination there is this provision: Whether a witness or his counsel may cross-examine other witnesses depends on the attitude of the committee.

It has been said that the custom is to permit little or no cross-examination, then there is a citation and a more extended discussion.

And on a subject of presenting written statements or calling witnesses, a discussion.

And with respect to the pertinency of testimony, discussion and, Mr. Williams, a citation of *Sinclair v. U. S.* ((1929) 279 United States, 263), with a quotation therefrom.

And on page 18 under No. 7, with respect to defamation by a congressional witness, material and discussion and cases.

On page 19, with respect to the undignified activity of a member, discussion, citation of the case of *U. S. v. Pechart et al.* ((1952) 183 Fed. Supp. 417), and referring to a case *Barsky v. U. S.* ((1943) 167 Fed. Second 241, 250).

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. Just judging by the headings of these several paragraphs which counsel has placed into the record and without reading the detailed subject matter, it occurs to me that at least the paragraphs under the heading "Right of Witnesses Before Congressional Committees" and the right of counsel and the right of cross-examination would well be worth reading in detail, and if time permits and under the plan of the morning session, I would like to have them read.

Mr. CHADWICK. I should be very glad to read them.

The CHAIRMAN. You may proceed.

Senator CASE. Mr. Chairman, under the heading part IV, "Procedure Before Investigating Committees" and reading the paragraph labeled "A," "Rights of Witnesses Before Congressional Committees," I wonder if counsel might proceed with that?

Mr. CHADWICK. To spare my voice, I request that associate counsel read this.

The CHAIRMAN. Mr. de Furia will proceed to read.

Mr. DE FURIA. With the permission of the chairman, part IV, "Procedure Before Investigating Committees," section A—

The CHAIRMAN. What are you reading from?

Mr. DE FURIA. This is a résumé of the law, Mr. Chairman, made by the staff for the committee.

The CHAIRMAN. Are you reading from the Reorganization Act, or merely a statement commenting on it?

Mr. DE FURIA. It is a comment of the committee counsel, the choice of the words being mostly our own, based upon an interpretation of the authorities, cases, and statutes, as well as the precedents of the House and the Senate, relating to this subject.

The CHAIRMAN. You may proceed.

Mr. DE FURIA. Subsection A, "Rights of Witnesses Before Congressional Committees":

There are no statutes protecting a witness appearing before a congressional committee from intimidation or coercion. In fact, there are very few absolute safeguards for the protection of a witness before a congressional committee. His treatment generally is dependent upon the attitude of the chairman and the members of the committee. An investigation conducted by a committee is not a trial; therefore the rules of a court of law do not apply. Nor, generally speaking, do the constitutional guaranties relative—

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. Who is saying that? Is that the counsel's discussion or is that some statement by some authority, or is that a statute?

Mr. DE FURIA. That is counsel's conclusion, Senator Case, based upon the authorities cited. I did not read the authorities. I think you have a copy of our law brief. I think there are about 10 authorities. I will be glad to read them into the record.

Senator CASE. The statements you have read are the conclusions of counsel, based upon authorities cited?

Mr. DE FURIA. Yes, sir.

Senator CASE. But the statements are not the statements of any court or of any precise authority or constitutional precedents or congressional precedent.

Mr. DE FURIA. No, sir. Wherever we have a quotation from an authority, sir, I shall indicate quotation marks.

The CHAIRMAN. May I inquire of Senator Case whether he still wants that read, since it is not a citation of any court or congressional adjudication of any kind.

Senator CASE. I note below there are some quotation marks. Whether they are direct quotes from something, I think it would be just as well to have them read.

The CHAIRMAN. Would counsel please read the quotation?

Mr. DE FURIA. Yes, sir.

The CHAIRMAN. There will be time for argument on presenting the various views with respect to whatever the statute and rules of the Senate are in due time. We permitted the reading of the general subject and these statutes and the general law governing this inquiry, governing the matter of accusations that have been referred to us by the Senate.

Senator Case, how seriously do you want that pressed?

Senator CASE. I think you might finish this paragraph under that heading, and whether it is a quotation from a court decision or whether it is counsel's opinion.

The CHAIRMAN. If it is counsel's opinion, you do not want him to read it, do you, or you may have whatever you want on that.

Senator CASE. I think he could finish the paragraph in the time we are discussing it.

The CHAIRMAN. All right, proceed.

Mr. DE FURIA. Nor, generally speaking, do the constitutional guaranties relative to trials have any application except possibly those relating to the privilege against self-incrimination—the fifth amendment—and to the right to be secure against unreasonable searches and seizures—the fourth amendment.

In conducting a hearing, the committee thus is not bound to follow the rules of evidence or the precedents or principles of courts of law. And there is a citation from various authorities, including *Townsend v. United States*, which is as follows:

* * * study of the practice in investigative proceedings and of the rules pertaining thereto indicates that * * * they have been to a large extent untrammelled by legal rules and prescriptions.

Continuing with the presentation of committee counsel: It is fundamental, of course, that the investigation must be in pursuit of a legislative purpose. But as investigation will be presumed to have such a purpose and once that purpose is established, the inquiry may be as broad, searching, and exhaustive as is necessary to make effective the constitutional powers of Congress.

Again quoting from the Supreme Court decision of *Townsend v. United States*:

Within the realm of legislative discretion, the exercise of good taste and good judgment in the examination of witnesses must be entrusted to those who have been vested with authority to conduct such investigations * * *.

The witness cannot determine for himself whether the questions proposed are germane to the matter of inquiry ;

orderly processes of legislative inquiry require that the committee shall determine such questions for itself.

Senator Case, the chairman, has asked me to read the provision from United States Code 2, section 193, reading as follows :

No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House, upon the ground that his testimony to such fact or his production of such papers may tend to disgrace him or otherwise render him infamous.

Mr. CHADWICK. I had expected, Mr. Chairman, to pick up and complete the two additional pages of the summary of which I was engaged when we referred to some particular inquiry therein.

With your permission, and for the sake of certainty, I think I read at page 19, with reference to the undignified activity of a Member, without reading into detail.

On page 19, and 20, 12, quorum citations, including *United States v. DiCarlo* (1952, 102 Fed. Supp. 597), and *United States v. Auippa* (1952, 102 Fed. Supp. 609) ; also *United States v. Bryan* (1950, 339 U. S. 323, 332-335).

At pages 21 and 22 is a study which supports certain propositions which are cited by us in detail.

The final reference on the brief is to the rules of the Senate, at article 1, section 5, clause 2, of the Constitution, authorizing the Houses to determine the rules of their proceedings, and legal propositions citing *United States v. Ballin* (114 U. S. 1, 5, 1892, p. 97).

That is the conclusion of the brief in its present form.

Mr. WILLIAMS. Mr. Chairman.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. If Mr. Chadwick has concluded, I would like to say, sir, that I have no objection to his legal brief going into the record, provided it is labeled for what it is. It is a vigorously partisan advocate's brief on the law. It is a prosecutor's brief, and, as such, I think it should go into the record provided it is labeled as such and provided it is identified as being the prosecutor's side of this case.

I say that, sir, for this reason : In this brief Mr. Chadwick undertakes to answer a couple of arguments which I was not permitted to make on the first day. I don't think it is quite fair that this brief should purport to be an impartial analysis of a law when it at the same time undertakes to refute an argument which I probably had only completed 5 percent of at the time I was interrupted on the first day.

I want to call attention also to this : That in this brief counsel says on three occasions, where he said orally as he referred to it—

We have decided that the Gillette committee had jurisdiction contrary to the position advanced by counsel for Senator McCarthy.

The CHAIRMAN. I state, Mr. Williams, that is not the decision of the committee. That is the decision of the counsel.

Mr. WILLIAMS. And we also—

The CHAIRMAN. I would say also no committee member, as far as I know, has read this brief.

Mr. WILLIAMS. Yes, sir. I appreciate that. He also said, and I think this is very important:

We have decided it is not important whether Senator McCarthy was subpoenaed or not because the fact is he was not and did not demand a subpoena.

Mr. Chadwick has arrived at this startling conclusion without hearing our defense, and I think he is a little premature in making decisions before we have been accorded the opportunity either to present our side of the law or to present our side of the facts.

The CHAIRMAN. May I say this: That the statement by Mr. Chadwick and Mr. de Furia represents their own views and they are not the views of the committee, and no decision has been made on these points, except in a preliminary way we had to decide the matters we were going to take testimony on and we made that decision. The final decision has not been made on any of these matters and when he says they decided, he is speaking for the committee counsel and nobody else.

Mr. WILLIAMS. I would like to make just one more observation, if I may, sir, with respect to this material which Mr. Chadwick has presented for his side of this case.

The CHAIRMAN. There is not any side of it, as far as the committee is concerned. We are still going to get all the evidence, all the law we can on this matter that is pertinent and relevant. We want to get all the facts, and we have offered to subpoena anyone that you wanted, or to follow any leads that you had, that you might suggest, so we can have the investigators get that evidence and bring the witnesses before this committee, so long as it is relevant and pertinent to the hearings on these particular charges.

Now, that being the situation, I think what the gentlemen have done here is in keeping with the whole matter, to get the law.

Of course, when they read the law, read a statement into law and they go over a matter, apparently they have it to make up their minds whether it is one way or another; otherwise they could have said, "It might be this way; it might be the other," and it would be of very little help in making up the minds of the committee.

Mr. WILLIAMS. I would hope, if Mr. Chadwick is serving as legal counsel to the committee, he will not impose his legal mind on these propositions before we are given an opportunity to be heard.

Mr. CHADWICK. Mr. Williams, may I have a word?

The CHAIRMAN. Just let him finish, Mr. Chadwick. I interrupted him, and I want him to finish.

Mr. WILLIAMS. I want to say this also: Our position with respect to the Gillette committee was misrepresented, and I am sure inadvertently misrepresented. It seems to me in this brief here Mr. Chadwick has built a strawman up and then shot him down. It is a strawman we don't adopt. We have never said at any time, nor do we say now, nor shall we say hereafter, that the Gillette committee did not have jurisdiction to look into the exclusion and expulsion and censure matters.

What we did say, operating as it was under the Benton resolution, was that it did not have the authority to go back behind 1947 because the Benton resolution gave it authority only to go to 1947, as it was originally drawn, as it was subsequently ratified by the Senate.

Secondly, there was a reference made to title XVIII, section 1905. The brief which Mr. Chadwick has handed me a copy of does not

even purport to quote all of that statute. It talks about whoever being an officer of the Government divulges or discloses or makes known information shall be subject to a penalty. Half the statute is quoted and Mr. Chadwick said the remaining part of it simply related to the people's sanction; but the fact of the matter is the remaining part of the statute demonstrates clearly that Congress was talking about trade secrets, processes, operations, and apparatuses, insofar as the information related thereto is concerned.

Then, also, the statement was made that title V, section 652, which guarantees the right to every member of the executive department to bring information to Members of Congress and provides specifically that right shall not be interfered with, was read in this brief, and Mr. Chadwick made the remark, as he read it, that, of course, that would be superseded by regulations and resolutions of the Senate, specifically mentioning the resolutions on secrecy or the Executive orders on secrecy by the President.

I want to call the attention of the committee to the fact, lest any inference be drawn from what Mr. Chadwick said to the contrary, that Congress reenacted title V, section 652, in 1948, 4 months after we had the first Truman secrecy order. In other words, Congress, at the time that it passed the statute, had the Truman order before it, Executive order on secrecy, and in the face of that it reenacted this statute to guarantee to members in the executive their right to petition Congress and to give them such information as they have.

Now, I think those things, in the interest of fairness—I know I am premature in getting into the defense, but I can't let these matters go unchallenged when they are given in the guise of an impartial analysis of the law.

I say I have no objection to this going in if it is labeled as a legal view of this case, Mr. Chadwick's legal view of this case, but certainly I do object to its going in as to the findings on the law of impartial counsel.

MR. CHADWICK. Mr. Williams, I am glad to have an opportunity now to reply to several aspects of your statement.

First, I want to say, sir, in all respect, that the brief as produced was an honest effort to produce an impartial review of the law as we find it, without application to the matters before the committee.

Your criticisms, sir, are those which counsel very naturally feels about briefs that anyone prepares. We always feel we could make up a better one or we regret that we haven't prepared a better one. However, the paper was prepared by us under the strict instruction of this committee that our approach to the problem, and a fair approach, should be nonpartisan, and I think it will be found there are sections there which a lay reader might believe had direct application to the support of other views than those which we advanced.

Now, I have another question: You point to the fact we cited three cases which you had quoted to us. Naturally, we take account of all cases that come to our attention. Whether we had all three of those cases, or not, before you mentioned them, I cannot now assert.

I do assert, however, if they had any application when you mentioned them at the bar of this committee, they have an application also to our brief.

And, Mr. Williams, is it not the fact that you promised me a week ago that you would let me have your brief, the brief in support of your position to which you refer?

It is my recollection you called me afterward and said you would be a few days late, and I said, of course, your time was my time on the question of the delivery of your brief.

Am I correct in stating now I have not yet seen your brief?

Mr. WILLIAMS. You are correct to this extent, Mr. Chadwick: You are correct insofar as what you have said, but you haven't stated the whole fact. The whole fact is that I went before this full committee, which was in executive session, I believe, on Thursday evening, and I told the committee that I had made a commitment to furnish it with certain legal principles in the form of a brief and the commitment was they were to have it on Thursday. I said to the members of the committee, and you were present, that I could comply with that commitment if I kept the girls in the office at the mimeographing machines late that evening. It was the unanimous feeling of the committee that I should not do that and if I presented my position today in written form that I would fully comport with the desires of the committee.

That is the fact, Mr. Chadwick, and I propose to submit my brief here today, but what I objected to, sir, was that you undertook to answer me on an oral argument that I had started to make, but was not permitted to finish, was not permitted to get into, which I do not think complies with the basic dictates of fair play.

Mr. CHADWICK. Mr. Williams, that is a matter which I and the committee should take into cognizance. I have always tried to be fair, and I am generally successful. I didn't mean to dispute there was any question with respect to delay in the preparation of your brief. I merely pointed out we could not postpone the preparation of our brief until your very efficient and, I am sure, hard-worked staff had a chance to prepare yours.

Senator ERVIN. Mr. Chairman.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. Mr. Chairman, I would like to make just this observation: I think there is a good deal to what Mr. Williams says with reference to the designation of the brief. When this matter goes back to the Senate, it will necessarily go on the record made before this committee and I think it would be helpful to the Senate to have the legal views of Mr. Chadwick and also the legal views of Mr. Williams and, consequently, I think it would be a good thing if we incorporated the legal briefs on both sides in the record for the use of the Senate as well as for the use of the committee, with a designation to the effect that they do represent legal views.

I would like to make one additional observation, and that is: When the chairman ruled he would take the evidence rather than hear the whole oral argument of Mr. Williams on the legal question, I thought that ruling was correct because I have spent most of my life in the law and I have found out that, as a lawyer or as a judge, I never could interpret the law without the facts; that, therefore, you have to have the facts, know what the facts are, before you can determine what the law is and what the application of the law is. For that reason I think the ruling of the chairman to the effect that we would hear the evidence before passing on the point of law raised by Mr.

Williams was correct because, as I say, and as Senator Stennis expressed the idea, out of the facts the law arises.

I would think it would be well for the Senate and the committee to have the benefit of briefs on both sides, that they should be inserted in the record and designated as legal views so that the Senate might not arrive at the conclusion that they are anything except the legal views presented.

The CHAIRMAN. Are there any further comments?

At this point I think I should make this statement: That, because of the holiday period and the vacation period, the number of people whom we wanted to interview before we proceeded with this hearing, we were not able to interview them or were not even able to find their whereabouts. So, it is necessary now to postpone the public hearing for a time.

The fact is we also have a number of very pressing matters that the committee must take consideration of in executive session. So, there won't be any time lost, actually.

Senator STENNIS. Mr. Chairman?

The CHAIRMAN. Senator Stennis.

Senator STENNIS. Mr. Chairman, may I say just one word about the briefs?

It just occurs to me the committee has the benefit of two briefs on this matter, on the law. Neither one of them is a committee brief. I have never seen either one of them and I am anxious to see both of them. They will be helpful, I am sure, and then we will all perhaps read some cases pointed out in those briefs.

The CHAIRMAN. Is it not possible, Senator, we may not agree with either one of them?

Senator STENNIS. Yes. That is the inference. Certainly the committee has no brief and we have seen no brief, and we are anxious to get to these major cases that may be reflected in each brief.

The CHAIRMAN. I will continue with my statement.

We will recess this hearing until 2:30 this afternoon.

The committee will meet in executive session immediately following this continuance.

(Whereupon, at 11:35 a. m., the hearing was recessed to reconvene at 2:30 p. m., same day.)

AFTERNOON SESSION

(Thereupon, at 2:30 p. m., the committee reconvened.)

The CHAIRMAN. The committee will be in session.

Counsel will call the witness, if it has one.

Mr. DE FURIA. Mr. Chairman, we have here under subpoena, Mr. Walter Winchell, and I desire that he be called and sworn.

The CHAIRMAN. Mr. Winchell, will you please come forward. Raise your right hand and be sworn.

Do you solemnly swear that the testimony you will give in the matter now pending before the committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WINCHELL. Yes; I do.

TESTIMONY OF WALTER WINCHELL

Mr. DE FURIA. With the permission of the chairman, Mr. Winchell, what is your full name, sir?

Mr. WINCHELL. Walter Winchell.

Mr. DE FURIA. And your address?

Mr. WINCHELL. 50 West 59th Street, New York City.

Mr. DE FURIA. What is your business or profession, Mr. Winchell?

Mr. WINCHELL. Newspaper.

Mr. DE FURIA. How long have you been in the newspaper business?

Mr. WINCHELL. Thirty-two years.

Mr. DE FURIA. Were you one of the reporters, Mr. Winchell, who covered the Army-McCarthy hearings here last May?

Mr. WINCHELL. Yes, sir.

Mr. DE FURIA. Did you write a column during the course of those hearings with reference to a copy of a 2 $\frac{1}{4}$ -page letter or document?

Mr. WINCHELL. Yes; I did.

Mr. DE FURIA. In a column which you wrote, and which was published, I believe, first on May 6, and later on May 9, 1954, did you say that you had in your possession a copy of the 2 $\frac{1}{4}$ -page document or letter addressed to General Bolling?

Mr. WINCHELL. Yes; I did.

The CHAIRMAN. Mr. de Furia, I think probably you had better identify that a little closer with any so-called security matter.

Mr. DE FURIA. Yes, sir.

So that there may be no misunderstanding, Mr. Winchell, between you and me, we are referring to a copy of a letter or document which was produced by Senator McCarthy in the course of the hearings described as classified information, with the words "Personal and Confidential via liaison" from the FBI to General Bolling, with reference to espionage matters at Fort Monmouth.

Are we in accord about what we are talking about?

Mr. WINCHELL. Yes.

Mr. DE FURIA. And you did say in a newspaper column written by you that you had a copy of that 2 $\frac{1}{4}$ -page letter or document in your possession?

Mr. WINCHELL. Yes.

Mr. DE FURIA. When did you first obtain possession of that copy, Mr. Winchell?

Mr. WINCHELL. If you are asking the date, counsel, I am not sure, the exact date. But it was during one of the hearings here in this room.

Mr. DE FURIA. Do you recall the first day that you wrote an article or column, or made a radio talk referring to the fact that you had possession of a copy?

Mr. WINCHELL. Do I recall the date?

Mr. DE FURIA. Yes.

Mr. WINCHELL. No, sir; I do not.

Mr. DE FURIA. Can we agree that it was about May 6?

Mr. WINCHELL. Around that time; I believe that would be correct.

Mr. DE FURIA. Of this year?

Mr. WINCHELL. Yes.

Mr. DE FURIA. What time of the day did you receive your copy of the 2¼-page document?

Mr. WINCHELL. I am not sure whether it was morning or afternoon, but it was during one of the short recesses.

Mr. DE FURIA. Did you receive it here in this Senate caucus room?

Mr. WINCHELL. Outside the Senate caucus room.

Mr. WILLIAMS. Mr. de Furia, I think if we are going to talk about a 2¼-page document, we ought to have that document carefully identified so that we can see precisely what you are referring to in your interrogation of Mr. Winchell, so that Mr. Winchell will know exactly what you are talking about when you allude, as you have 3 or 4 times in your questioning, to a 2¼-page document. What 2¼-page document? Let's see it.

Mr. DE FURIA. Unfortunately, Mr. Chairman, for reasons which will become evident as I proceed with my examination, we cannot see it, sir, and I suggest that I be permitted to continue the examination.

Mr. WILLIAMS. Unless we are talking about a 2¼-page document which is subject matter germane to this inquiry, all of this questioning is irrelevant. So I think it should be established what we are talking about. I think that my position is very sound and I ask the Chair to rule.

Mr. DE FURIA. Perhaps, Mr. Chairman, Mr. Williams was not listening to me but I asked Mr. Winchell specifically whether we were talking about the same thing and described the letter or document to him, and I don't think there is any misconception between Mr. Winchell and me. I don't think so. Is that correct, Mr. Winchell?

The CHAIRMAN. Mr. de Furia, I think probably you could identify it a little further by asking Mr. Winchell whether or not he was in the room when they were discussing a certain classified document or classified information during the course of the hearings and if that is that particular one that he had reference to. I am certain that is the one we are inquiring about. That is the one that seems to be in issue here under one of these categories.

Mr. DE FURIA. Yes, sir.

Mr. Winchell, were you present during the Army-McCarthy hearings when Senator McCarthy presented, or had in his possession, and made an examination with reference to, a paper that I think he called a letter, a 2¼-page letter that was marked "Personal and Confidential" from the FBI to General Bolling?

Mr. WINCHELL. Yes.

The CHAIRMAN. Does that satisfy your objection?

Mr. WILLIAMS. Obviously, unless Mr. Winchell saw the document that was referred to during the Mundt hearings. Mr. Winchell does not know whether the copy that he is talking about is a copy of that document. I think Mr. de Furia must first ask Mr. Winchell if he saw the document that Senator McCarthy referred to and that was handed to Mr. Jenkins during that hearing. Otherwise, Mr. Winchell obviously cannot testify to whether or not what he had was a copy of it or whether it even purported to be a copy of it.

The CHAIRMAN. Well, it seems to me that we cannot be too technical about this matter.

Mr. WILLIAMS. I do not want to be technical, Mr. Chairman. I just want it to be established before this interrogation continues that Mr. Winchell is talking about the same thing that Mr. de Furia is and I

don't see how we can establish that unless Mr. Winchell saw the document that Senator McCarthy had in his hands that was passed to Mr. Jenkins and it was passed back to Senator McCarthy. If he saw it, I will withdraw my objections and we can go forward because then he would be qualified to state whether or not the document which he had was a copy of it; but I don't see how in the world this witness can say that he had a copy of a document that he never saw.

So I think it is most important that we establish whether he saw it or not.

The CHAIRMAN. I think the nature of the—the very nature of the document itself limits the identification. When it was before the Mundt committee, as I recall it, very few of the committee apparently saw it.

They didn't read it, at least, and even the Army counsel would not read it, nor the Secretary of the Army would not read it, and I think it was identified sufficiently so that we know what he was talking about.

It may not be of any weight. The fact of the matter is, I think probably it will help you rather than hurt you.

Mr. WILLIAMS. We are out for all the facts, too, Mr. Chairman.

The CHAIRMAN. I am going to rule that he may proceed and go on with the testimony.

Mr. DE FURIA. In what part of this building, Mr. Winchell, did you receive that letter?

Mr. WINCHELL. Directly outside.

Mr. DE FURIA. Outside of the Senate caucus room?

Mr. WINCHELL. Yes, sir.

Mr. DE FURIA. Was that during intermission or brief period during one of the hearings?

Mr. WINCHELL. I think it was one of those brief recesses. It could have been such, and perhaps was.

Mr. DE FURIA. Who handed you the 2¼-page letter which you said was your copy?

Mr. WINCHELL. I refuse to tell that.

Mr. DE FURIA. On what ground do you refuse to tell it?

Mr. WINCHELL. I will not reveal the source of information.

Mr. DE FURIA. I am asking you, sir, on what grounds you refuse to answer that question.

Mr. WINCHELL. On the grounds I just gave you, sir.

Mr. DE FURIA. Unless I am mistaken, Mr. Winchell, you have not given me any grounds. You said you refused to answer the question. Now, I am asking you, on what grounds do you refuse to answer?

Mr. WINCHELL. I would not reveal my source of information on any news.

Mr. DE FURIA. You had a meeting about an hour ago with Senator Watkins, Judge Chadwick, and myself; did you not, Mr. Winchell?

Mr. WINCHELL. That is right.

Mr. DE FURIA. You made certain statements to us at that meeting; did you not?

Mr. WINCHELL. I did.

Mr. DE FURIA. Are you shifting your position in any way from what you told us then, to what you are telling us now?

Mr. WINCHELL. No. I know that I will say what I said to you downstairs, at the finish, that I would not reveal my source of information, even if I knew it.

The CHAIRMAN. Well, are you not just laboring the point a little, or do you actually know who delivered it to you?

Mr. WINCHELL. I beg pardon?

The CHAIRMAN. Do you know who delivered it to you?

Mr. WINCHELL. I do not know. I am not sure.

The CHAIRMAN. Had you said that before, it would have saved a lot of difficulty.

Mr. WINCHELL. I thought I would expedite things, sir, and get to the point.

The CHAIRMAN. Well, that was the way to get to the point, if you did not know it, if you do not know the person who gave it to you; and that is what I understood you to tell us at the interview.

Mr. WINCHELL. That is right.

The CHAIRMAN. All right; proceed.

Mr. DE FURIA. Was your answer correct, that you are not certain who gave you the copy? Is that what you said, sir?

Mr. WINCHELL. That is correct.

Mr. DE FURIA. Do you have any knowledge about who gave you the copy?

Mr. WINCHELL. No, as I indicated to you and Senator Watkins downstairs.

Mr. DE FURIA. I prefer that you answer, up here, if you will.

Mr. WINCHELL. Well, as I explained to you gentlemen, I have received considerable assistance from various people in this room, particularly newspaper people, some of them men I have not met before. When they heard that I was covering the caucus room for any highlights and sidelights, not the usual curiosity, several of these men offered their memos to me. They did that outside, during the recess.

Mr. DE FURIA. So I am fair to you, sir; are you now withdrawing your refusal to answer the question that I propounded to you?

Mr. WINCHELL. If I knew, counsel, I would not tell you. That is what I said to Senator Watkins before; and I thought I would get right to the statement.

The CHAIRMAN. Well, of course, I say the statement is unnecessary, because you told us you do not know; and you now say you do not know who gave it to you.

Mr. WINCHELL. I am not sure.

The CHAIRMAN. Did you have any idea who it was?

Mr. WINCHELL. I said, in your office, about an hour ago——

The CHAIRMAN. You are answering, now. Forget——

Mr. WINCHELL. I am not sure, Senator. There are so many people offering material to me; and I believe I told you all that I was engaged in a conversation, or listening to other people talk, directly outside this room, and accepting offers from various people in the form of memos—they were planning to write the business—to let them place in my hand, sometimes just with the acknowledgement "thank you very much," lacking time to continue with the conversation I put them into my pocket before reading them.

The CHAIRMAN. As I understand, you say now you cannot—you do not know the person who gave it to you?

Mr. WINCHELL. Not that particular piece of paper.

The CHAIRMAN. Can you describe in more detail just how it was handed to you—first, where, and then how?

Mr. WINCHELL. Outside—I beg your pardon, sir?

The CHAIRMAN. Yes.

Mr. WINCHELL. Outside this room, right near the door, to the right of the door—my right—I remember talking to 2 or 3 men. They were reporters. Various people passing by handed me little memos, not necessarily news. Some of them were messages of a personal nature; and I do recall getting what I believe to be this 2¼-page document somewhere. It was folded.

The CHAIRMAN. Somebody handed it to you while you were there?

Mr. WINCHELL. Somebody did, sir.

The CHAIRMAN. Did you get a full view of the person who handed it to you?

Mr. WINCHELL. No, I did not.

The CHAIRMAN. And, as of now, you do not know who actually gave it to you?

Mr. WINCHELL. Yes, sir.

The CHAIRMAN. You do?

Mr. WINCHELL. I do not know.

The CHAIRMAN. Well, you said "Yes." I thought you meant—just so I understand you, Mr. Winchell.

Mr. WINCHELL. Yes, sir.

The CHAIRMAN. I want to be sure whether I have given you a repetition of the actual language I was developing, and I did not consider that that question had been raised; because I thought you misunderstood. I thought you always had said to us you did not know who gave it to you; and therefore, of course, you could not say.

Mr. WINCHELL. I could not swear that I did know.

The CHAIRMAN. Well, that is what you are telling us, today. You are testifying to that.

Mr. WINCHELL. That is right.

The CHAIRMAN. You may proceed, Mr. de Furia.

Mr. DE FURIA. Mr. Winchell, do I understand you to state now, under oath, you do not know who gave you your copy of that 2¼-page letter?

Mr. WINCHELL. Yes, sir.

Mr. DE FURIA. Was he in uniform or in civies?

Mr. WINCHELL. I believe he was in civilian clothes.

Mr. DE FURIA. A man or a woman?

Mr. WINCHELL. Male.

Mr. DE FURIA. White or colored?

Mr. WINCHELL. White.

Mr. DE FURIA. About how old, Mr. Winchell?

Mr. WINCHELL. I really don't know.

Mr. DE FURIA. Was he a member of Senator McCarthy's staff?

Mr. WINCHELL. I don't think so.

Mr. DE FURIA. Are you sure about it?

Mr. WINCHELL. I'm not sure.

Mr. DE FURIA. Did you know all the members of Senator McCarthy's staff?

Mr. WINCHELL. Many of them.

Mr. DE FURIA. You knew Mr. Carr?

Mr. WINCHELL. Yes.

Mr. DE FURIA. Mr. Juliana?

Mr. WINCHELL. Yes.

Mr. DE FURIA. And Mr. Surine?

Mr. WINCHELL. Yes.

Mr. DE FURIA. Was it any of those?

Mr. WINCHELL. No.

Mr. DE FURIA. Of course, it was not Senator McCarthy who handed it to you?

Mr. WINCHELL. No.

Mr. DE FURIA. Now, were you seated or standing when it was handed to you?

Mr. WINCHELL. Standing.

Mr. DE FURIA. To whom were you talking?

Mr. WINCHELL. I believe reporters.

Mr. DE FURIA. Do you know some of the reporters? Can you identify them, Mr. Winchell?

Mr. WINCHELL. I know nearly all of them in this room, or in the room at the time, but I'm not sure who these reporters were. It might have been Mr. Spivak of International News. It might have been Jerry Greene or Jim Patterson of the New York Daily News—several of them—Mr. Kempton of the New York Post.

Mr. DE FURIA. How soon—

Mr. WINCHELL. I'm not sure any of these names I mentioned were the ones I was talking to at the time.

Mr. DE FURIA. How soon after you received that paper, Mr. Winchell, did you examine it?

Mr. WINCHELL. Shortly after, when I sat back at the press table.

Mr. DE FURIA. Now, I take it, sir, you heard the description of the 2 $\frac{1}{4}$ -page letter as it developed during the Army-McCarthy hearings?

Mr. WINCHELL. Yes.

Mr. DE FURIA. That committee went into a long description of it, comparisons. Now, did the copy that you had in your possession—did it, or didn't it compare with the 2 $\frac{1}{4}$ -page document as it was described in those hearings?

Mr. WINCHELL. I believe the letter that I had was the same.

The CHAIRMAN. That was not quite an answer to the question. Did it compare?

Mr. WINCHELL. Oh, I do not know, Senator.

The CHAIRMAN. Well, from what you heard—

Mr. WINCHELL. I didn't see the letter.

The CHAIRMAN. I realize that, but he had already told you, described in some detail, the remarks on it, personal and confidential, and all that sort of thing.

Mr. WINCHELL. Right.

The CHAIRMAN. Did this compare?

Mr. WINCHELL. I believe it was the same letter.

The CHAIRMAN. But still you do not answer the question. Were the same, substantial markings on this letter and the date on this letter you heard mentioned—

Mr. WINCHELL. It was signed, I believe, by John—J. E. Hoover—containing a list of names of enemy suspects.

Mr. DE FURIA. Mr. Winchell, in your column didn't you state this:

The letter to General Bolling, about Reds and pro-Commies at New Jersey Government radar places, which is being argued about, is in this columnist's possession, too.

Mr. WINCHELL. I replied I believe it is the same.

Mr. DE FURIA. Well, is there any doubt about it, sir?

Mr. WINCHELL. I have no doubt.

Mr. DE FURIA. Then your testimony is that the copy you had, so far as you know, was the same; is that correct, sir?

Mr. WINCHELL. Oh, I really believe it was a copy of the evidence offered here.

Mr. DE FURIA. You knew it was a classified document, did you not?

Mr. WINCHELL. Yes.

Mr. DE FURIA. And did you retain that document in your possession?

Mr. WINCHELL. Yes.

Mr. DE FURIA. How long?

Mr. WINCHELL. About a week and a half.

Mr. DE FURIA. Did you show it to anyone, Mr. Winchell?

Mr. WINCHELL. No one.

Mr. DE FURIA. No one at all?

Mr. WINCHELL. Nobody saw the text.

Mr. DE FURIA. Did you show any part to anyone?

Mr. WINCHELL. When I took it out of my pocket, with other papers, to look at what I had collected during that recess, I believe I said to the men sitting near me at the press table, about here, "Gee, look what I have."

Mr. DE FURIA. What did you do with your copy of the 2¼-page letter?

Mr. WINCHELL. I contacted John E. Hoover at once about it, or as soon as I could get to a telephone.

Mr. DE FURIA. Mr. Chairman, Mr. Winchell has told us about some conversations he had with Mr. Hoover, but as I understand the rules of evidence, I am not permitted to develop that conversation.

The CHAIRMAN. I will say this: Since the question has arisen as to whether or not it was a copy—as I recall the testimony that has been introduced heretofore—it has been that the exhibit was before the Army-McCarthy hearings, was taken to Mr. Hoover and he saw that. I think maybe we can pursue this a little further with Mr. Winchell on the question of whether he did consult Mr. Hoover about this letter, purely on that basis, not for any other purpose, to see whether or not it is the same letter.

Mr. WILLIAMS. I think if Mr. Winchell is going to say what Mr. Hoover said, of course, his testimony would be objectionable. We think Mr. Hoover should be called, under the rules of this committee.

The CHAIRMAN. Well, Mr. Hoover's testimony probably would not be direct evidence for any other purpose than to identify what Mr. Winchell showed him.

Mr. WILLIAMS. I don't think Mr. Winchell is competent to tell this committee what Mr. Hoover has said about this letter. I think only Mr. Hoover is competent under the rules laid down by the committee that hearsay evidence would be rejected.

The CHAIRMAN. As I remember, in the other hearing, and it is also in this record, Mr. Hoover did not appear there. He was allowed to identify the letter and a messenger was sent out.

Mr. WILLIAMS. That committee, sir, did not purport to be operating under the rules of evidence, though.

The CHAIRMAN. I realize that. Of course, if you do not want this in the record—I say I think it is favorable to you, and we felt duty bound to present it.

The charge has been made that Senator McCarthy had permitted this document to fall into the hands of an unauthorized person, to wit, a gossip columnist, and we wanted to get all the evidence on this point, and, while I recognize it is remote, if you want to object, I suppose you can, and I am going to rule on it. It is up to you.

Mr. WILLIAMS. Well, I haven't heard a pending question. I don't know what Mr. de Furia is seeking now.

Mr. DE FURIA. May I have a moment, sir?

The CHAIRMAN. On the objection to the questioning by counsel, as far as Senator McCarthy is concerned, we will withhold any further questioning on this line.

You may proceed, Mr. de Furia, on another phase of it.

Mr. DE FURIA. Mr. Winchell, what did you do with the two-and-a-quarter page copy which you had?

Mr. WINCHELL. I destroyed it.

Mr. DE FURIA. When did you destroy it, sir?

Mr. WINCHELL. About 8 to 10 days after I had possession of it.

Mr. DE FURIA. Where did you destroy it?

Mr. WINCHELL. In a hotel.

Mr. DE FURIA. Where?

Mr. WINCHELL. In the bath room of the Shoreham Hotel.

Mr. DE FURIA. Which hotel?

Mr. WINCHELL. Shoreham.

Mr. DE FURIA. Here in Washington, sir?

Mr. WINCHELL. Yes, sir.

Mr. DE FURIA. And how did you destroy it?

Mr. WINCHELL. I burned it; flushed it.

The CHAIRMAN. How was that?

Mr. WINCHELL. I burned it and flushed it.

The CHAIRMAN. You said you burned it, or flushed it? Which did you do?

Mr. WINCHELL. And—I burned it and flushed it, Senator.

The CHAIRMAN. That makes quite a difference.

Mr. WINCHELL. Yes, it does.

Mr. DE FURIA. Did you have any conversation with Senator McCarthy at any time with reference to that two-and-a-quarter page letter after you received your copy of it?

Mr. WINCHELL. I don't recall having any conversation with the Senator about it.

Mr. DE FURIA. Does that mean you may or may not have had?

Mr. WINCHELL. I'm pretty sure I didn't.

Mr. DE FURIA. You did not?

Mr. WINCHELL. I'm pretty sure I didn't.

Mr. DE FURIA. All right.

Were any copies made of that two-and-a-quarter-page letter from your copy?

Mr. WINCHELL. Not from my copy; no, sir.

Mr. DE FURIA. Are you sure of that?

Mr. WINCHELL. I'm positive. Nobody saw it but me.

Mr. DE FURIA. And it was in your exclusive possession?

Mr. WINCHELL. In my possession. I didn't even show it to Mr. Hoover. I just told him I had it.

Mr. DE FURIA. Are you sure about that, that you didn't show it to Mr. Hoover?

Mr. WINCHELL. I think I took it out of my pocket and said, "I have that letter, John."

Mr. DE FURIA. Then you may have shown it to him?

Mr. WINCHELL. Well, that way, without showing, revealing the text.

Mr. DE FURIA. Now, I ask you again: Are you sure that you didn't show it to Mr. Hoover?

Mr. WINCHELL. I'm pretty sure I did not show it to Mr. Hoover.

Mr. DE FURIA. All right, but to be fair with you, you may have and don't remember; is that right?

Mr. WINCHELL. I don't recall doing that, counselor.

Mr. DE FURIA. All right.

The CHAIRMAN. Let me ask you this question: Didn't you go to Mr. Hoover to see whether or not it was proper for you to use it?

Mr. WINCHELL. Yes, sir.

The CHAIRMAN. And he told you it wasn't proper to use it?

Mr. WINCHELL. I said, "John, I have a copy"——

The CHAIRMAN. No.

Mr. WINCHELL. "Of that letter."

The CHAIRMAN. I am only asking that one question. You went there for the purpose of finding out whether you could use it or not, whether it was classified or not; isn't that the fact?

Mr. WINCHELL. I guess you are right about that.

The CHAIRMAN. And after you talked with him, you didn't use it?

Mr. WINCHELL. Yes, sir; I did not use it.

The CHAIRMAN. How could he determine whether it was a copy or not and classified confidential unless you had shown it to him?

Mr. WINCHELL. I beg your pardon.

The CHAIRMAN. I say, How could he determine and see that it was classified without seeing it, without you showing it to him?

Mr. WINCHELL. May I, Senator, tell you what the conversation was?

The CHAIRMAN. No; we can't. Counsel objected. I think it was in their favor, but they objected. So I am not going to let you tell that conversation.

Mr. WINCHELL. They published the conversation. That is a matter of public record.

Mr. WILLIAMS. I don't have any objection to this, if you want to pursue it.

The CHAIRMAN. All right. You tell us what Mr. Hoover told you.

Mr. WINCHELL. I said, "John, I have a copy of that letter."

I assumed he knew what I was talking about, because it had been on the television and radio, in the papers, all afternoon. His name had been bandied about considerably, and that letter.

The CHAIRMAN. You made it known that you had it?

Mr. WINCHELL. I said, "I have a copy of that letter, John. I want to ask you something."

I said, "Would you arrest me if I published it?"

He said, "Yes."

I said, "You're kidding, John."

He said, "No; I am not."

That was the end of the conversation.

The CHAIRMAN. Well, now, as a matter of fact, you did not let him see the letter to be sure that it was the same one, did you?

Mr. WINCHELL. I could not swear that I showed him the letter. I wish I could tell you I had. I cannot recall doing that. I am trying to recapture the scene at the table in the restaurant.

The CHAIRMAN. Do you think Mr. Hoover would take it for granted that you had a copy of that letter without looking at it?

Mr. WINCHELL. Would he take it for granted?

The CHAIRMAN. Without looking at it.

Mr. WINCHELL. I do not know whether he believed that I had it or not. He answered my question because I asked him if he would arrest me, and he said, "Yes."

The CHAIRMAN. That was based on the fact that it was a classified document and you had a copy of a classified document, is that right?

Mr. WINCHELL. That is right.

The CHAIRMAN. That is all I have.

Senator ERVIN. Mr. Chairman.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. I want to be certain I understood the testimony with reference to the receipt of this document.

Do you swear that you are certain that you do not know who handed you this document?

Mr. WINCHELL. That is right, sir.

Senator ERVIN. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. de Furia.

Mr. DE FURIA. Mr. Winchell, Senator McCarthy had a copy of the two-and-one-quarter page letter, as I understand it, and you had one also. Is that right? Do you know of any other copies in existence, of your own knowledge?

The CHAIRMAN. Out of your own knowledge, now, remember.

Mr. WINCHELL. I do not remember.

Mr. DE FURIA. Did you see any others while you were here, or since that time?

Mr. WINCHELL. No.

Mr. DE FURIA. Of your own knowledge, you do not know that any other than the two letters were in existence? Is that correct, sir?

Mr. WINCHELL. That is correct. I had heard that there were 35 distributed to the other newspaper people.

Mr. DE FURIA. That is what we lawyers call hearsay so far as you are concerned.

Mr. WINCHELL. I told you that before, and I offer it again for background.

The CHAIRMAN. Do any other members of the committee wish to ask any questions?

Mr. Williams, you may proceed.

Mr. WILLIAMS. Mr. Winchell, just so that we can understand your testimony, as I understand you, you were down here covering the so-called Army-McCarthy hearings in May of 1954.

Mr. WINCHELL. Yes, I was.

Mr. WILLIAMS. And on May 4, 1954, while you were seated out here covering the hearings, there was reference made by Senator McCarthy to a letter which purportedly bore the typed name of J. Edgar Hoover as the sender; is that right?

Mr. WINCHELL. Yes, sir.

Mr. WILLIAMS. And that letter, you recall, do you not, Mr. Winchell, was passed on May 4, 1954, by Senator McCarthy up to Ray Jenkins, counsel for the committee?

Mr. WINCHELL. That is right.

Mr. WILLIAMS. Ray Jenkins retained possession of that letter for a time and thereafter, you recall, do you not, Mr. Winchell, that he returned it to Senator McCarthy?

Mr. WINCHELL. Yes, and I believe it was received and unread and unopened by anyone on that committee.

Mr. WILLIAMS. As a matter of fact, at no time during the hearings while you were present were the contents of that letter made known?

Mr. WINCHELL. I know of no one at any time revealing the contents.

Mr. WILLIAMS. So that as a newspaperman sitting at the table covering the hearings, you were in precisely the same position as everybody else in the room except Senator McCarthy and Ray Jenkins? You did not know what was in that memorandum or that letter.

Mr. WINCHELL. I eventually read it.

Mr. WILLIAMS. Did you read the document, Mr. Winchell?

Mr. WINCHELL. Oh, I beg your pardon. I meant to say that I read the copy I had. I did not see the purported original or whatever it was up there.

Mr. WILLIAMS. At no time during the hearings were the contents of that document made known.

Mr. WINCHELL. Would you please repeat that?

Mr. WILLIAMS. At no time during the hearings were the contents of that document made known.

Mr. WINCHELL. I do not believe so.

Mr. WILLIAMS. The only thing that was disclosed about that document was that it was a document which purported to be from J. Edgar Hoover to General Bolling, and that it was a memorandum on 3 pages; is that right?

Mr. WINCHELL. That is right.

Mr. WILLIAMS. Now, as I understand your testimony, thereafter you received a copy, or you received a document from someone whose identity you do not know, and that that document also was a document which bore the name J. Edgar Hoover as sender and, as recipient, General Bolling.

Mr. WINCHELL. That is right.

Mr. WILLIAMS. And apart from that point of similarity, you know of no other similarity between what you had and what was referred to in the record of the Army-McCarthy hearings?

Mr. WINCHELL. That is true.

Mr. WILLIAMS. So that you are unable to say here under oath, in response to Mr. de Furia's questioning, you are unable to say under oath that you ever had in your possession a true copy of the document just discussed at such great length of 3 days during the Mundt inquiry, are you?

Mr. WINCHELL. No.

Mr. WILLIAMS. Now, you said in response to Mr. de Furia's question that Senator McCarthy did not give you what you had in the way of a memorandum. Let us call what you had the Winchell document

and let us call the one at issue in this hearing the hearing document or the Mundt document, the Mundt-Jenkins-Army document.

Mr. WINCHELL. Counsel, as I testified, I did not take a very good look at this person, although I knew it was a male, but I am sure that if you contacted the people to whom I showed this copy, that they might be helpful. I don't know. I mean at the press table.

Mr. WILLIAMS. They might be helpful?

Mr. WINCHELL. Or any one of the other reporters, ladies of the press who might have seen people or a person passing things to me, to certify to me that it was or it was not Senator McCarthy. I do not know.

Mr. WILLIAMS. But you have testified in response to a question that it was not Senator McCarthy who gave you this document.

Mr. WINCHELL. I am pretty sure that it was not Senator McCarthy. I am pretty sure that if Senator McCarthy approached me and handed me something, I am pretty sure somebody would have seen that.

Mr. WILLIAMS. And likewise, to the best of your recollection and to the best of your knowledge, it was not a member of his staff?

Mr. WINCHELL. That is right.

Mr. WILLIAMS. Now that we have established, Mr. Winchell, No. 1, that this document to which you have made reference here today and to which Mr. de Furia has made reference cannot be shown to have been a copy of the document that is germane to this inquiry, and to the best of your recollection you did not get it from Senator McCarthy or any of his staff, let me ask you this: The fact of the matter is that you did not ever show your, what I call the Winchell document to John Edgar Hoover and say, "Look this over, John, and let me know if I can use it," did you?

Mr. WINCHELL. No, I did not.

Mr. WILLIAMS. In other words, you simply said to John Edgar Hoover, "John, I have a copy of that 'hot document,' as Ray Jenkins used to call it, and is it all right if I publish it." Is that right?

Mr. WINCHELL. Will you arrest me if I publish it, is what I said.

Mr. WILLIAMS. Yes, "Would you arrest me?"

So that when you said that to Mr. Hoover, Mr. Hoover's answer was directed to whether or not you could publish the document about which there was so much discussion and so much discussion had been held in the Army-McCarthy hearings, is that right?

Mr. WINCHELL. That is right.

Mr. WILLIAMS. And he did not look at what you had in your hand?

Mr. WINCHELL. No, he accepted my question. He simply said, "Yes, I will arrest you."

Mr. WILLIAMS. He simply said, "Yes, I will arrest you," is that right?

Mr. WINCHELL. That is right.

Mr. WILLIAMS. The fact of the matter is that even your so-called, what we will call the Winchell document did not have security information in it, did it, Mr. Winchell?

Mr. WINCHELL. In my opinion it was not security information.

Mr. WILLIAMS. As a matter of fact, Mr. Winchell, what you had in your possession clearly indicated such portions as could have been security matters had been removed, did it not?

Mr. WINCHELL. I believe so.

Mr. WILLIAMS. So that you simply had—the Winchell document—was simply in the form of a letter from which had been removed those things which might affect in any way security measures?

Mr. WINCHELL. I believe that is true.

Mr. WILLIAMS. I have no further questions.

The CHAIRMAN. Since you have made those statements, I wish you would tell us, and tell the committee just why you did believe, and why you said that it was a copy of the two-and-a-fourth page letter that had been classified as a security document. Give us your reason. We would like to know why you said it in your publication.

Mr. WINCHELL. From hearing the charges and explanations across the table at which you are sitting now, Senator, I have no reason to doubt that what I had was not an exact copy of what had been presented to the Senate committee.

The CHAIRMAN. You remember you told me something about having “Personal and Confidential” about the top of the letter that you had?

Mr. WINCHELL. That I had what, sir?

The CHAIRMAN. That it was written in red across the top of it, “Personal and Confidential.”

Mr. WINCHELL. “Personal and Confidential,” and John Edgar Hoover’s signature, I think.

The CHAIRMAN. Signature?

Mr. WINCHELL. Typewritten.

The CHAIRMAN. Typewritten?

Mr. WINCHELL. This was the copy.

Incidentally, Senator, I just recall some of the people to whom I had revealed this part [indicating] in opening it up that much, just the top, and the huge letters “C-o-p-y” in red and perhaps a line at the top to the left, “Personal and Confidential,” and perhaps the date over here.

I think that Mr. Green of the New York Daily News, who was sitting on my right, he may have seen it. He was closest to me. I don’t know whether I showed it to Mr. Spivak of International News, or to Miss McKee, also of International News Service, but they might corroborate that I did have what I believed to be a copy of what was in evidence here.

The CHAIRMAN. You have given us now all the reasons why you thought you were right in saying it was a copy?

Mr. WINCHELL. I was trying to.

The CHAIRMAN. You were so sincere about it that you published it in your column without equivocation or ifs and ands?

Mr. WINCHELL. I believed that it was a true copy.

The CHAIRMAN. I see.

We just wanted to be sure that you had given the committee all your reasons for believing it was. We wanted to clear up this incident. It was one of those matters charged, and we wanted to get the statement on it, and you seemed to be the logical person to make the explanation.

Mr. WINCHELL. Also, sir, I think that during the testimony, it was either Mr. Cohn or somebody else testifying, that he named one name in this list of suspects. He described this name as one who had already appeared in the headlines in the role of a Communist agent, and that the others had never been known before, and this coincided with the copy I had.

Mr. DE FURIA. Mr. Chairman, I would like to have the names of the newspapermen or newspaperwomen who may have seen Mr. Winchell's copy. You said Mr. Green?

Mr. WINCHELL. Counsel, I did not show the text to anyone.

Mr. DE FURIA. I understand, sir.

Mr. WINCHELL. I just opened it up like that [indicating] and he probably took a look out of the corner of his eye and went on about his business. I don't know. I didn't turn around.

Mr. DE FURIA. I missed 1 or perhaps 2 names. Mr. Green——

Mr. WINCHELL. Jerry Green, of the New York News, was on my right. In front of me, to my right, Jimmy Patterson.

Mr. DE FURIA. James?

Mr. WINCHELL. James Patterson, of the New York News, and Jerry Green, of the same newspaper.

Mr. DE FURIA. Jerry Green?

Mr. WINCHELL. Jerry Green, James Patterson.

Mr. DE FURIA. And James Patterson. You mentioned a Mr. Spivak.

Mr. WINCHELL. Spivak was seated 2 or 3 from me; I may have turned it around and said, "Look." I don't know that I did. I think I did.

Mr. DE FURIA. Did you say a Miss McKee?

Mr. WINCHELL. She may have been at the table at the time. Some of the reporters had to get up and leave and go and file copy a great deal of the time.

Mr. DE FURIA. Now, sir, I have four names. Are there any more?

Mr. WINCHELL. I offer those to help you decide whether I had anything that may have been a copy of the letter in controversy here.

Mr. DE FURIA. What was the color of the paper you had?

Mr. WINCHELL. White.

Mr. DE FURIA. Was it copy paper, or regular white paper, letter paper?

Mr. WINCHELL. It was—I don't know the name of it. It is a white, very thin tissue.

Mr. DE FURIA. Was it legal cap size, or octavo size?

Mr. WINCHELL. It was this size [holding up sheet of yellow paper].

Mr. DE FURIA. Regular business letterhead size.

Mr. WINCHELL. Yes.

Mr. DE FURIA. Did you see in the audience here today any person who had another copy of that letter?

Mr. WINCHELL. That isn't clear to me, Counsel.

Mr. DE FURIA. Do you see among the newspapermen or newspaperwomen here in this room anyone who had another copy of the 21¼-page letter?

Mr. WINCHELL. I never knew that any of them had. I have heard that 35 copies had been distributed—not, Counsel, not mainly to people in this room, but to heads of newspaper services and newspapers in Washington and New York City.

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. Mr. Winchell, the copy that you had, was that a mimeographed copy, or was it a carbon copy?

Mr. WINCHELL. A carbon.

Senator CASE. And you heard that there were some 35 copies that had been distributed?

Mr. WINCHELL. I had later heard—oh, a good week or so after—and I had already told this to Senator Watkins and Mr. Chadwick and the counsel in his office earlier today.

The CHAIRMAN. The reason we didn't ask about it was that we thought it was hearsay.

Mr. WINCHELL. Well, mine was hearsay, Senator.

The CHAIRMAN. What was that?

Mr. WINCHELL. Mine was hearsay.

The CHAIRMAN. What you are saying now is hearsay.

Mr. WINCHELL. I think I prefaced it by telling you that the man himself was a notable publisher of a newspaper.

The CHAIRMAN. You do not need to go into the whole thing. I thought it was hearsay, and that is the reason I didn't ask you about it.

Mr. WINCHELL. I see.

Answering your question, Senator, this source told me that he had heard that 35 of the same, copies of the same letter, had been distributed in high places or newspapers.

The CHAIRMAN. Senator Case, are you through?

Senator CASE. Yes, Mr. Chairman.

The CHAIRMAN. Senator Stennis.

Senator STENNIS. Mr. Winchell, according to this stamp that was on this paper that you testified about, you say it was stamped "Personal and Confidential"?

Mr. WINCHELL. Typewritten.

Senator STENNIS. Typewritten. I got the idea a while ago that it was a stamp that had been impressed on there.

Mr. WINCHELL. It was typewritten, sir.

Senator STENNIS. In the same way, apparently, as the body of the instrument was?

Mr. WINCHELL. Yes, sir.

Mr. STENNIS. And the name, J. Edgar Hoover, was stamped or typewritten?

Mr. WINCHELL. Typewritten.

Senator STENNIS. Was there any kind of a marking on it indicating a committee file number or stamp or any indication of that kind?

Mr. WINCHELL. I am pretty sure not, sir.

Senator STENNIS. This person that handed this paper to you, was that someone that you had then known, someone you then knew, and had forgotten who it was, or some person you never did know?

Mr. WINCHELL. One I didn't take a good look at. It was handed to me folded in half, among the things like that [showing folded piece of paper] would be handed to me if I was busy talking to someone and somebody who didn't want to wait, and this was handed to me by a male whose face I didn't get a good look at. I assume it was somebody who wanted to be helpful with some trivia.

Senator STENNIS. Was it your impression, then, that this party is a stranger to me, or was it your impression that it was just one of the boys around the table?

Mr. WINCHELL. I think it was just somebody who wanted to pass along—

Senator STENNIS. Would you recognize that person now if he were brought before you?

Mr. WINCHELL. I certainly would, I think.

Senator STENNIS. You think you would?

Mr. WINCHELL. I have gone down the list of all the people it may have been, and eliminated; but there were 1 or 2 others that I have not seen.

Senator STENNIS. You would not mind identifying that person if he were brought before you?

Mr. WINCHELL. I would like it for my own curiosity. If I knew the source, I would not reveal it to this committee.

Senator STENNIS. I beg your pardon?

Mr. WINCHELL. If I knew the source, I would not reveal it to this committee.

Senator STENNIS. You wouldn't mind identifying the person if the person was brought before you?

Mr. WINCHELL. I could not identify him publicly; I would know myself that that was the one; I think I would.

Senator STENNIS. Does this privilege that you claim, you think, extend to a paper that the FBI Director told you that you would be subject to arrest for if you published it?

Mr. WINCHELL. That question eludes me.

Senator STENNIS. Do you think that the privilege that you claim extends to a paper or a document that you would be arrested for if you had published it?

Mr. WINCHELL. Senator, I do not claim any privilege. I have just made a statement. I said I would not reveal any source of information.

Senator STENNIS. But you say on your oath that you do not know who this person was?

Mr. WINCHELL. Yes, sir.

The CHAIRMAN. Any further questions?

Mr. DE FURIA. I have a question or two, Mr. Chairman, please.

The CHAIRMAN. Proceed.

Mr. DE FURIA. Mr. Winchell, the words "Personal and Confidential," were they in red or black ink on your copy?

Mr. WINCHELL. The only thing red, as I recall, was the word "copy."

Mr. DE FURIA. Do I assume that the words "Personal and Confidential" were in black ink or dark blue or blue?

Mr. WINCHELL. I believe so.

Mr. DE FURIA. Do you know anybody who knows who is the person who handed you the 2¼-page document?

Mr. WINCHELL. Do I know anyone who knows the source of any information?

Mr. DE FURIA. Yes, sir.

Mr. WINCHELL. No; I do not.

Mr. DE FURIA. Do you know any way that this committee can identify the man who gave you the 2¼-page document?

Mr. WINCHELL. No; I do not.

Mr. DE FURIA. Have you seen the man who gave you the 2¼-page letter since about May 4, I believe, or May 6, whatever the date was, between that time and today; have you seen that person?

Mr. WINCHELL. I haven't seen him again.

Mr. DE FURIA. You have not seen him again?

Mr. WINCHELL. I know that he doesn't work for the McCarthy committee, because I went over that list.

Mr. DE FURIA. I am not asking whether he worked for the McCarthy committee, but have you seen him?

Mr. WINCHELL. No; I have not, sir.

Mr. DE FURIA. Have you tried to find out who he was?

Mr. WINCHELL. I did when I was covering the story down here. I kept looking around the room and down the corridor and various places and seeing if I could find the man that I thought might be one of them that would have passed something to me.

There had been several, as I told you, and Senator Watkins, in the office, who had been running errands every day for others, some people around the committee table, others among the spectators, who would pass along messages to me, and I tried to recap the various people, some of the ladies who were running errands for the Senate committee at the time, and I felt pretty sure that none of these people were the ones; and yet I did not take a very good look at the person who passed me the paper. It was not the only piece of paper that I received in the corridor at that time.

Mr. DE FURIA. Mr. Chairman, they are all the question from the committee counsel, sir.

The CHAIRMAN. Are there any further questions?

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. Mr. Winchell, was there a red border on the copy that you had on the cover page?

Mr. WINCHELL. No, the only thing red, Senator, was the word "copy" in very huge letters.

Senator CASE. Do you recall whether or not there was any imprint on the cover page which started out with the word "Confidential," then followed with any warning or caution against the disclosure of the contents of the material within?

Mr. WINCHELL. I am sure, Senator, there was no warning among those lines.

Senator CASE. In other words—

Mr. WINCHELL. It wasn't even marked "Secret." It was just called "Personal-Confidential," just between us.

I wish you all could see this.

Senator CASE. On occasion, I have seen a few confidential papers. They generally have warning notices on them, frequently in red, with red border. And I am trying to determine merely whether or not what you had was a copy which had been prepared in that manner, or whether it was simply a carbon copy. This word "copy" that you referred to, would you judge that that was the label on the paper that was used just as a second sheet might be labeled "copy"?

Mr. WINCHELL. No, sir; it seemed to be stationery that was just made for copies and it was so distinctly marked.

I think, too, that it wasn't solid: that there were lines for the C, and two lines to make an O, and so on—like sort of a red border for the C, with white space.

Senator CASE. Was the paper a tissue paper, such as is used for making carbon copies?

Mr. WINCHELL. Yes, what they call fishskin.

Senator CASE. That is all, Mr. Chairman.

The CHAIRMAN. Are there any further questions?

If not, you will be excused, Mr. Winchell.

Mr. WINCHELL. Thank you, sir.

Mr. DE FURIA. Thank you on behalf of the committee counsel, Mr. Winchell.

The CHAIRMAN. We thank you for coming because this matter had to be cleared up one way or the other. We wanted to get all the facts we could relevant to the matter.

Mr. WINCHELL. Thank you.

The CHAIRMAN. I assume it will be too much to ask if there are any witnesses among the newspaper people, or others, who saw the man who delivered this letter to Mr. Winchell. You can volunteer after the meeting, if you wish to, and let us have your name in order to make a complete record of the event.

We would like get someone who could identify the person who actually gave you that instrument.

Mr. WINCHELL. Yes, sir.

Am I excused now?

The CHAIRMAN. You are excused.

Mr. WINCHELL. Thank you.

Mr. WILLIAMS. Mr. Chairman, I make no formal motion at this time, but I think in the interest of having a wholly relevant record, the Chair might consider in its wisdom striking the testimony that has just been heard, for these reasons:

Mr. Winchell, under any rules of evidence, has not identified the document which he had in his possession with the document which is in question in this hearing.

Regardless of how loose the rules of evidence may be, there is no identification. There is no tying up of these two documents as being the same or similar.

No. 2, Mr. Winchell, in his testimony, has made quite clear that his recollection of the events, as I understand his testimony, that neither Senator McCarthy, nor anyone identified with him, gave this document to Mr. Winchell so that his testimony becomes, insofar as the issues in this case are concerned, Mr. Chairman, I sincerely believe, very irrelevant.

I do not make any formal motion because I think whether his testimony stands, or does not, is a matter pretty much of indifference to us, but I think in the interest of a clean record, relevant, germane testimony, the chairman might consider striking it.

The CHAIRMAN. I admit that it is not very direct evidence with reference to this document. When it was before the committee in the first place, it seemed to be rather illusive, and if the testimony that Mr. Winchell has given here is somewhat indefinite and value, it is not much more vague than the situation was before the committee—I mean the Army-McCarthy committee—and we can give whatever weight we think should be attached to it.

But we felt, as I said once before, that since this charge had been made, it would be our duty to get all the evidence, no matter how light in weight it might be, with respect to this particular matter.

We have exhausted every resource in trying to discover whether there was any truth in that charge, or not, and this is the only evidence we have been able to find and such as it is, we have presented it, and I think it ought to stay in the record for whatever it is worth.

At this point, I will state that our counsel advises us that with the introduction of the testimony just now concluded, the testimony with

respect to point 3 is, as at present, completed; and the staff has nothing further to offer on points 1, 2, 4, and 5.

However, at the executive committee meeting this morning, uncertainty remained as to what other testimony might be taken this afternoon. It was agreed by the committee that for the convenience of both counsel for the committee and for Senator McCarthy, that this meeting would be recessed now, and that we would convene tomorrow at 10 a. m., at which time Senator McCarthy will go on with his presentation.

The foregoing is subject to the reservation that the committee may reopen the hearings at any time, particularly as to matters developing or being developed at the hearings. In other words, this is not exactly as a court trial where, when you rest, you are through unless you can show some mistake or something of that sort, but we are interested in getting all the evidence, no matter whom it helps or hurts in this matter, and if certain matters develop in the hearing, in the presentation by Senator McCarthy, whatever he is to present under the rules set forth, then we don't want to be precluded by anything we have said here from going on further and developing any new leads that might be shown to exist.

The committee will now be in recess until tomorrow morning at 10 o'clock.

(Whereupon, at 3:30 p. m., the hearing was recessed until tomorrow, Wednesday, September 8, 1954, at 10 a. m.)

HEARINGS ON SENATE RESOLUTION 301

WEDNESDAY, SEPTEMBER 8, 1954

UNITED STATES SENATE,
SELECT COMMITTEE TO STUDY CENSURE CHARGES PURSUANT
TO SENATE ORDER ON SENATE RESOLUTION 301,
Washington, D. C.

The select committee met, pursuant to recess, at 10:10 a. m., in the caucus room, 318 Senate Office Building, Senator Arthur V. Watkins (chairman) presiding.

Present: Senators Watkins (chairman), Johnson (vice chairman), Carlson, Case, Stennis, and Ervin.

Also present: Senator McCarthy; E. Wallace Chadwick, counsel to the committee; Guy G. de Furia, assistant counsel to the committee; John M. Jex, clerk of the committee; John W. Wellman, staff member; Frank Ginsburg and Ray R. McGuire, members of Senator Watkins' staff on loan to the committee; and Edward Bennett Williams, counsel to Senator McCarthy, with his associates, Agnes A. Neill and Brent Bozell.

The CHAIRMAN. The committee will be in session.

We will ask the photographers to desist in the taking of pictures.

Mr. Williams, you may proceed.

Mr. WILLIAMS. Mr. Chairman, will you call Gen. Kirke Lawton, please?

The CHAIRMAN. General Lawton, will you please come to the stand?

Raise your right hand and be sworn. Do you solemnly swear the testimony you will give in the matter now pending before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

General LAWTON. I do.

TESTIMONY OF MAJ. GEN. KIRKE B. LAWTON, ACCOMPANIED BY HIS COUNSEL, JOHN E. PERNICE

The CHAIRMAN. For the purpose of the record, give us your full name and your address.

General LAWTON. Maj. Gen. Kirke B. Lawton, retired; mailing address care of Fort Monmouth, N. J.

I would like to introduce at this time Mr. John E. Pernice—P-e-r-n-i-c-e—who is the Chief of the Legal Division of the Chief Signal Officer of the Army, who I have asked to come here this morning with me as counsel.

The CHAIRMAN. You came here this morning under subpoena?

General LAWTON. Yes, sir.

The CHAIRMAN. Mr. Williams, you may direct the examination.

Mr. WILLIAMS. Thank you, sir.

General, how long were you in the United States Army prior to your retirement?

General LAWTON. Thirty-seven years, sir.

Mr. WILLIAMS. When did you retire, sir?

General LAWTON. August 31, 1954.

Mr. WILLIAMS. What was your last post of command?

General LAWTON. Fort Monmouth, N. J.

Mr. WILLIAMS. When did you take over as commanding general of that post?

General LAWTON. December 19, 1951.

Mr. WILLIAMS. And for how long did you fill the position as Commanding General of Fort Monmouth?

General LAWTON. Until March 24, 1954.

Mr. WILLIAMS. And thereafter, where were you assigned?

General LAWTON. Oh, I was on a combination of hospital, Walter Reed, and on sick leave, back at Fort Monmouth.

Mr. WILLIAMS. Were you Commanding General of Fort Monmouth at the time when the Senate Investigating Committee conducted an investigation there of subversion?

General LAWTON. I was.

Mr. WILLIAMS. And can you fix that in point of time?

General LAWTON. October 1953.

Mr. WILLIAMS. The month of October 1953?

General LAWTON. Yes.

Mr. WILLIAMS. And for how long did that investigation, to your knowledge, continue?

General LAWTON. Well, there were closed sessions at which I attended some in October. I attended no more. I remember reading in the press there were more closed sessions and then there were some open hearings in December of employees from Fort Monmouth. I would say, from the press, December of 1953. It may have continued.

Mr. WILLIAMS. Do you know Brig. Gen. Ralph Zwicker?

General LAWTON. I do.

Mr. WILLIAMS. What was his post of command in 1953?

General LAWTON. Camp Kilmer, N. J.

Mr. WILLIAMS. Now, directing your attention, General Lawton, to December of 1953, did you have a conversation, sir, with Brig. Gen. Ralph Zwicker at Camp Kilmer?

General LAWTON. I did.

The CHAIRMAN. Can you fix the time more definitely than that, Mr. Williams?

Mr. WILLIAMS. I will ask the General to fix it for us.

General LAWTON. I don't think I can. It was, I would say, late November, early December. I had occasion to go to his post on another matter, and I was half an hour early. I called on him, as a courtesy call, as a post commander, and I think it was the first time I had met him.

Mr. WILLIAMS. And you fix that in the month of of December, General?

General LAWTON. Or late November.

Mr. WILLIAMS. Now, on that occasion, did you have a conversation with him regarding Senator McCarthy and the work of the Senate Permanent Investigating Committee at Fort Monmouth?

General LAWTON. I will have to respectfully decline to answer that question on the basis of the Presidential directive of May 17, 1954, regulations based upon that which prohibits members of the executive department from revealing conversations between employees thereof.

Mr. WILLIAMS. Do I understand, sir, that you refuse to answer the question which is directed to the substance of your conversation with General Zwicker?

General LAWTON. That is correct.

Mr. WILLIAMS. And I understand you base your refusal on the order of May 17?

General LAWTON. Yes.

Mr. WILLIAMS. Do you have a copy of that order with you, General?

General LAWTON. I haven't; no.

Mr. WILLIAMS. Don't you know, General, that order of May 17, 1954, referred only to the Government Operations Committee and the hearing then in session which was commonly known as the Army-McCarthy hearing?

General LAWTON. I recall exactly what you say, but I have taken advice from counsel and other sources and after that counsel, it is my belief that that directive not only applied to the so-called Mundt committee but it applies to this or any other; and, therefore, I still would have to respectfully decline.

Mr. WILLIAMS. General, will you tell this committee, counsel, and myself, with whom you talked about this since Monday night?

General LAWTON. I will have to respectfully decline to answer that one on the basis that the same directive—conversations between two employees of the executive—

The CHAIRMAN. May I interrupt there a moment, Mr. Williams? Do you have a copy of that directive?

Mr. WILLIAMS. I know what the directive says. I don't have a copy of it.

General LAWTON. My counsel has a copy of it.

The CHAIRMAN. I would like to see a copy, and I think members of the committee would before we rule on this line of questioning.

Mr. WILLIAMS. Do you have an extra copy of it there, General?

General LAWTON. No; I haven't.

Mr. WILLIAMS. Senator Watkins, may I look at it with you? May I look at that directive, please?

The CHAIRMAN. Yes; you may. I will advise you, however, that it was placed in the record yesterday as a part of the statement of our counsel, Mr. Chadwick, who so advises me now. It appears at page 359 of yesterday's record. You are welcome to look at it, here, if you wish.

(A copy of the document referred to was handed to Mr. Williams.)

The CHAIRMAN. There is nothing at the moment requiring a ruling by the Chair, so we will proceed.

Mr. WILLIAMS. I believe the last question that I directed to General Lawton was whether or not he was predicating his refusal to answer on this order; and then, following that, when he said "Yes," I asked him if he had had a conversation yesterday with anyone in the Department of the Army on this matter. That was the pending question, I believe.

General LAWTON. I saw counsel for various periods yesterday.

Mr. WILLIAMS. You talked to Mr. Brooker, the General Counsel of the Department of Defense; did you not?

General LAWTON. I will have to respectfully decline to answer that one, on the same basis.

Mr. WILLIAMS. As a matter of fact, prior to your conversation with Mr. Brooker, you were prepared to testify on this subject which I am now interrogating you on; is not that the fact?

General LAWTON. The difference in the status between an active-duty officer and a retired officer, I have never been interested in or familiar with. I was under the impression that there was some, or there was more leeway as a retired officer; and it might be that your statement is relatively true. But, to make sure, I never cross bridges until I come to them, and so, to make sure, before I appeared here, I did yesterday consult several counsel as to what regulations I am now operating under as a retired officer; and as a result of those conferences with counsel, I am of the opinion that I cannot answer that question.

Mr. WILLIAMS. Can you tell us, General, this much: Is it not the fact that counsel with whom you consulted yesterday was Army counsel or Defense Department counsel?

General LAWTON. Yes. One of them is right here.

Mr. WILLIAMS. As a matter of fact, Mr. Pernice is chief counsel, as I understood, and the chief officer, the chief counsel for the Signal Corps. Now, General, do I understand that you will refuse to testify with respect to any conversations that you may have had with General Zwicker, on any subject, and particularly with respect to the subject at issue here today?

General LAWTON. I will discuss that. I met him, and we passed the time of day away, and followed ball games, perhaps, and athletics and things like that. But the official answer is, I must respectfully decline to answer.

Mr. WILLIAMS. You did tell me the substance of your conversation with General Zwicker, Monday night, did you not?

General LAWTON. I did discuss the conversation with you; yes.

Mr. WILLIAMS. And you told me the substance of it?

General LAWTON. Yes.

Mr. WILLIAMS. Now, Mr. Chairman, may I say this, sir? Here I think we have a very, very cogent illustration of what this case is all about. We have a witness here on the stand who has information that is relevant and germane to this inquiry; and I, as a matter of fact, outlined to the committee, in executive session, in a very cursory way, what that evidence was, on yesterday; and now we find the Department of Defense gagging this witness on the basis, I say, Mr. Chairman, of altogether incompetent advice. It is either incompetent advice, or it is not even in good taste, because General Lawton—and I mean no criticism whatsoever of him, and I do not want my remarks to be construed that way, because I have the highest respect for him—I say that to the full committee—but General Lawton is obviously acting under orders, and those orders are either so predicated or incompetent, that is, or advice that is not given in good faith, because his attention is directed to an Executive order of May 17, 1954; and he is told that he may not testify on this inquiry, on the basis of that order.

The order says—and it is signed by the President, sent to the Secretary of Defense—

You will instruct employees of your Department that in all of their appearances before the subcommittee of the Senate Committee on Government Operations regarding the inquiry now before it, they are not to testify to any such conversations or communications or to produce any such documents or reproductions.

I quote it exactly. In other words, an order which counsel for the Army has told General Lawton binds him, is an order which relates only to the Government Operations Committee, in the inquiry pending as of May 17, 1954, which was the inquiry regarding Secretary Stevens, Senator McCarthy, and others; and this order has no applicability, no relationship in the world to the inquiry which is presently pending. Furthermore—

Senator CASE. Mr. Chairman—

Mr. WILLIAMS. I would like to say this, if I may—

The CHAIRMAN. Senator Case, will you wait a minute, until Mr. Williams has finished?

Mr. WILLIAMS. I may say this, Mr. Chairman, and I will be through. The information that I seek to elicit from General Lawton has no more relationship to national security or national defense than the price of yogurt. It is totally, totally irrelevant to any questions of security or defense; and it is absurd to say that such a conversation could be blocked from this inquiry.

Senator CASE. Mr. Chairman—

Mr. WILLIAMS. And I say this: I have no criticism whatsoever, and I do not want my remark to be construed as such; rather it is directed at the persons who, I say, gave him this wholly incompetent advice.

The CHAIRMAN. There is just one inquiry I want to make of him, Mr. Williams. I understood you to say that he received an order from the Defense Department, or from Defense officials, who have not testified. Of course, what he said, as I recall it—and I think the record will show that I am right—was that he sought advice, and, on the advice of counsel, he declines to answer, because he thinks it would be a violation of that order.

Mr. WILLIAMS. Is the Chair ruling that—

The CHAIRMAN. I have not ruled yet. Senator Case wished to be heard. I wanted to let you finish, first, and then I wanted to call that to your attention. And, now, I will recognize Senator Case.

Senator CASE. Mr. Chairman, I note that counsel said that he was giving an exact reproduction of the passage from the letter of the President. I will ask counsel if he read the entire sentence.

Mr. WILLIAMS. Are you directing your attention to me?

Senator CASE. I am.

Mr. WILLIAMS. No; I did not. I did not read the entire sentence, but I shall be glad to.

Senator CASE. Will you read the entire sentence?

Mr. WILLIAMS. Yes, sir; I shall be very happy to do so. I read:

Because it is essential to efficient and effective administration that employees of the executive branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations or communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the Subcommittee of the Senate

Committee on Government Operations regarding the inquiry now before it they are not to testify to any such conversations or communications or to produce any such documents or reproductions.

That is the entire sentence.

Senator CASE. Now, will you read the sentence that follows, which concludes the paragraph?

Mr. WILLIAMS. Yes, sir.

This principle must be maintained regardless of who would be benefited by such disclosures.

Senator CASE. Now, Mr. Williams, directing your attention to the first part of the first sentence, the long sentence—

Mr. WILLIAMS. Yes, sir.

Senator CASE. And the clause which you did not read the first time—

Mr. WILLIAMS. Because I felt it had no relationship to the point I was making.

Senator CASE. I invite your attention to the clause—

And because it is not in the public interest that any of their conversations or communications, or any documents or reproductions, concerning such advice be disclosed—

and that is with reference to advising with each other, which is in the first clause.

Mr. WILLIAMS. On official matters, Senator Case.

Senator CASE. On official matters. And the final sentence of the paragraph:

This principle must be maintained regardless of who would be benefited by such disclosures.

I am wondering, if that principle is to be maintained, if counsel, in advising General Lawton, would not advise him just as he has been advised. While the instant case was an appearance before the subcommittee of the Senate Committee on Government Operations, that is the occasion of the letter from the President to the Secretary, but I am unable to see, personally, how that principle that employees in the executive branch must be in position to be completely candid in advising each other, that it is not in the public interest that any of those conversations between them be maintained—I don't see how that could be maintained unless it were applicable to other cases and appearances before that particular subcommittee.

Mr. WILLIAMS. Senator, I believe, sir, that in any proceeding of this kind where there are accusations directed against one man, it is in the interest of justice that all the truth should come out, and I believe that all the relevant truth should be received in evidence here unless there is some rule or regulation which specifically tells an officer of the Army, as in this case, that he may not testify in this proceeding.

Now, there is no such regulation; there is no such rule; and if orders of this kind, Senator Case, I respectfully submit, are to be construed so liberally that persons in the executive can come before a committee of Congress and say that although there is no order which blocks you from getting my testimony, I have consulted counsel of the department which might be embarrassed by my testimony and they have suggested that I not testify—if that day comes, I say that the fact-finding, investigative agencies of this Congress will be stopped and

the avenues of information that have heretofore been open to this Congress will no longer be open; and the factfinding committees will be completely thwarted in their work.

Senator CASE. Mr. Chairman, I drew attention to this because it seems to me that this goes to the very heart of one of the big issues that was before the committee in the hearings conducted by Senator Mundt, and also to one of the issues that is involved here, and that is with respect to the privilege of conversations that are within the executive department, or conversations on the other side that are within the Congress.

The committees in the Congress have been very jealous to preserve the right of committees to hold executive hearings when they want to.

The committees of the Congress when they hold an executive hearing on appropriations or on other matters do not permit representatives of the executive branch to appear in those hearings except by invitation.

The committees of the Congress are jealous to preserve the right to hold executive sessions and confidential discussions, and I can understand how the executive branch can say, conversations between members of the executive branch that are in the category of official matters, are matters within 1 of the 3 branches of the Government.

Of course, it is to be noted that in the last part of the letter by the President, he said that he was not in any way restricting the testimony of witnesses as to what occurred where the communication was directly between any of the principles of the controversy within the executive branch on the one hand, and the members of a subcommittee or its staff, on the other.

Now, before interrogating the counsel for Senator McCarthy, I asked Mr. de Furia, the assistant counsel on the committee staff here, whether he or Mr. Chadwick had talked with General Lawton.

I would like to get the information, frankly, that I feel General Lawton can give us. I was hoping that possibly counsel for the committee had talked with General Lawton, because if that were true, that I think that he would be free to testify with regard to conversations between him and members of this committee, or members of this committee's staff under the terms of the President's letter.

I recognize that there are a lot of ramifications of this question, but I think if we want, if we venture to assert the right of congressional committees to demand the conversation that goes on between two officials in the executive branch, then the committee must recognize that we may be infringing upon the confidence that we can maintain for executive sessions of congressional committees as opposed to requests from the executive branch or from the judiciary.

Mr. WILLIAMS. Mr. Chairman, I want to say this: I don't know what your ruling will be, sir, but I say this before you make it:

There is no desire on the part of us to in any way embarrass General Lawton, or in any way put him in a position where he is affected detrimentally in his relationship with the department which he served for these many years and with the department from which he is now enjoying his retirement.

So, I will make a proffer of what we would have shown.

The CHAIRMAN. I doubt that that would be proper. You have not asked for an order directing him to testify, to answer the questions.

Do you want to raise squarely the question so that we will have something definite to rule on? As the record now stands I think I am not in a position yet to rule.

Do you now insist that he answer this question?

Mr. WILLIAMS. I will consult with Senator McCarthy on this and I will see what his disposition is, because I think to some extent there are personal considerations that must be kept in mind. I do not want to do anything to embarrass the general, but I would like to get the evidence.

The CHAIRMAN. You can understand that I do not want to rule on it unless there is an insistence that he be ordered and directed to answer the question. Then it will raise it squarely.

Senator JOHNSON. Mr. Chairman.

The CHAIRMAN. Senator Johnson.

Senator JOHNSON. Mr. Chairman, I should like to ask the witness:

Is there any question whatsoever of national security involved in the conversation between you and General Zwicker which you have refused to divulge to this committee of Congress?

General LAWTON. I don't mean to be picayunish, but an answer to your question would then reveal the conversation between General Zwicker and myself, which I am not at liberty to disclose.

Senator JOHNSON. Mr. Chairman, I think that is a very simple question and one that ought to be answered, and I don't think that the directive in May precludes the witness from answering that question.

If there is anything of national security involved, why I can see where this committee would have no right to ask the question.

If there is no matter of national security involved, it seems to me that this committee is being deprived of information that it should have.

I want to remind the chairman, and I know I do not need to remind him, that the Senator's political life is at stake in the question before this committee and it is a serious matter indeed. If the national security is not involved, then most certainly we should have help from the executive department in developing the true facts with respect to a Member of the United States Senate.

The CHAIRMAN. Senator Johnson, I will say that, in a way, to a degree at least, the question you asked General Lawton involves the same general problem that has been raised with respect to Mr. Williams' questions and I will say this: When we were advised yesterday that General Lawton would be questioned as a witness, we were not advised that he would raise any question about his right to testify.

Mr. WILLIAMS. Let me hasten to say to you, Mr. Chairman, that I did not know that there would be any question about that, because when I talked to General Lawton before we talked to Mr. Brooker in the Pentagon, there was not any question about his testifying. So I could not give the committee that information.

The CHAIRMAN. We were not advised and I did not know exactly what you knew about it, and for that reason the committee did not give consideration to what the possible ruling should be.

Mr. WILLIAMS. Mr. Chairman.

The CHAIRMAN. You know that the chairman is only the voice of the committee. I hesitate to make a ruling about this question involved during the other hearings.

Mr. WILLIAMS. I may be able to help you. I have talked to Senator McCarthy during the last minute and he says to me that it is his position that he does not want to force the Chair to rule on this.

He feels that General Lawton has suffered reparations for his testimony before the Government Operations Committee before and he does not want to put him in a position which would be embarrassing before this committee or with the Department of Defense, and we will not demand an order that General Lawton respond to this question.

The CHAIRMAN. Even though you may not demand the order, I think the committee should consider it because I think the committee does want to get all the information that it can lawfully get on the very important questions that have been raised by the charges against the Senator from Wisconsin, irrespective of whether you raise it or not. I think we should consider it.

Senator JOHNSON. Mr. Chairman.

The CHAIRMAN. Senator Johnson.

Senator JOHNSON. I was not quite through, Mr. Chairman.

The CHAIRMAN. All right, Senator Johnson. I had to make a ruling on that matter. I was going to suggest to the members of the committee that we ought to probably have an executive session to see what the stand of the committee will be on this matter.

You may proceed, Senator Johnson.

Senator JOHNSON. Mr. Chairman, in defense of my position I thought I heard yesterday, and I have not had a chance to go over the record of yesterday's hearing, but I understood that there was a ruling read yesterday with respect to the executive department and the executive department's privilege of speaking and testifying, that there was to be no impediment on anything which did not affect the national security. I would like to have our counsel speak to that point.

Was there not something read into the record yesterday with respect to the directive issued to the executive department that testimony could be freely given except in cases where the national security was involved?

The CHAIRMAN. Well, Senator, I do not know just how much of this discussion can take place here at this moment, but I do think, however, that the committee should consider this general question that has been raised.

As I have indicated, it is important to the committee to get all the truth, no matter who it helps or hurts in this controversy, and even though Senator McCarthy is not going to press the question, it has been raised and I think we ought to develop it and that is the reason for the executive session.

Senator STENNIS. I have a question, Mr. Chairman.

The CHAIRMAN. Senator Stennis.

Senator STENNIS. General Lawton, I understand you base your position solely on this directive dated May 17, 1954; is that correct?

General LAWTON. In general, yes.

Senator STENNIS. In general. Now, you do not have any other directive in mind than that which causes you to decline to answer?

General LAWTON. That is correct.

Senator STENNIS. Thank you.

Senator JOHNSON. Mr. Chairman.

The CHAIRMAN. Senator Johnson.

Senator JOHNSON. A reference has been handed me with respect to the matter which I just referred to a moment ago, entitled "Removal From Classified Civil Service," and I am reading from yesterday's record:

The attention of the committee is respectfully called to the last sentence of an act approved August 24, 1912 (37 Stat. 555; 5 U. S. C.: 652 (d), which reads:

"The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee, or member thereof, shall not be denied or interfered with."

Senator CASE. Mr. Chairman.

The CHAIRMAN. Just a moment until Senator Johnson finishes.

Senator JOHNSON. That is not the passage that I had in mind, but it is somewhat in point.

The CHAIRMAN. Senator Case.

Senator CASE. Mr. Chairman, I agree wholly with what the chairman has said with respect to desiring to get this information.

As I suggested earlier, I would like to see the information developed as we ought to develop any information that would be helpful in this matter.

With that thought in mind, I suggest that the committee call General Zwicker. My understanding is that he is here, that he is available, and I believe that on direct examination of General Zwicker, the testimony can be developed that counsel for Senator McCarthy desires to develop.

Mr. WILLIAMS. Mr. Chairman.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. I lost you there, Senator. If I cannot develop it through General Lawton who is retired, I cannot see how I can develop it through General Zwicker who is on active duty and I do not believe General Zwicker would be eager to testify to the facts that he hopes to develop through General Lawton. I would be most surprised if he is.

Senator CASE. It seems to me that the information might be developed by direct examination of General Zwicker as to what he did or positions he may have taken personally without reference to conversations between him and General Lawton.

The CHAIRMAN. Well, General, I think we could argue this back and forth and probably wouldn't get the matter settled officially so we could make a ruling. I suggest now, unless there is objection, the committee will go into executive session.

Senator JOHNSON of Colorado. Mr. Chairman.

The CHAIRMAN. Senator Johnson.

Senator JOHNSON of Colorado. May I have permission to insert in the record at this point, when I find it, the reference I mentioned a moment ago?

The CHAIRMAN. You may have such permission.

(The reference referred to is as follows:)

Section 18. Review within departments and agencies.

The head of each department and agency shall designate a member or members of his staff who shall conduct a continuing review of the implementation of this order within the department or agency concerned to insure that no information is withheld hereunder which the people of the United States have a right to know, and to insure that classified defense information is properly safeguarded in conformity herewith.

Section 19. Revocation of Executive Order No. 10290.

Executive Order No. 10290 of September 24, 1951, is revoked as of the effective date of this order.

Section 20. Effective date. This order shall become effective on December 15, 1953.

DWIGHT D. EISENHOWER,
THE WHITE HOUSE,

November 5, 1953.

(FR Document 53-9553; filed, November 9, 1953; 9:55 a. m.)

M. Constitution of United States of America, revised and annotated 1952, Senate Document 170, 82d Congress, 2d session, page 82.

If Congress so provides, violation of valid administrative regulations may be provided as crimes. But the penalties must be provided in the statute itself.

The CHAIRMAN. I started out to suggest that we take a recess, and that is what I am going to do now—recess——

Mr. WILLIAMS. Mr. Chairman, please. Mr. Chairman.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Thank you, sir.

May I suggest this: If the committee wants an executive session before deciding the question before it, may we have, please, sir, while still in open session, an opportunity to call our next witness and get his testimony in, which is on the same subject matter, and in order to have that behind us?

He has been waiting here for a day and a half to testify.

The CHAIRMAN. We will be willing to do that.

General Lawton may withdraw for the moment and we will call the next witness.

Mr. WILLIAMS. Mr. Chairman, would you please call William J. Harding.

The CHAIRMAN. Mr. Harding, will you please take the witness stand?

TESTIMONY OF WILLIAM J. HARDING, JR.

Will you raise your right hand and be sworn?

Do you solemnly swear that you will in the evidence you will present here give the truth, the whole truth and nothing but the truth, so help you God?

Mr. HARDING. I do, so help me God.

The CHAIRMAN. You may take the witness stand.

Give us your name and address.

Mr. HARDING. William J. Harding, Jr.

The CHAIRMAN. And your address?

Mr. HARDING. 525 Park Avenue, Borough of Manhattan, New York City.

The CHAIRMAN. You may question the witness, Mr. Williams.

Mr. WILLIAMS. Mr. Harding, how long have you lived in New York City, sir?

Mr. HARDING. Sixty years.

Mr. WILLIAMS. Lived there all your life?

Mr. HARDING. Yes, sir.

Mr. WILLIAMS. In what business are you engaged?

Mr. HARDING. I conduct a sales agency, a small sales agency.

Mr. WILLIAMS. Now, Mr. Harding, I want to direct your attention, if I may, to February 18, 1954, and ask you if on the morning of that date you were at the Federal Courthouse in Foley Square, in New York.

Mr. HARDING. I was, sir.

Mr. WILLIAMS. Will you tell us approximately what time you arrived there?

The CHAIRMAN. Just a moment, Mr. Williams. Will the witness pull the mike closer to him and lean forward, so that he may be heard?

Mr. HARDING. Yes, sir. Yes, sir.

The CHAIRMAN. It is not as sensitive as it might be, and, for that reason, you have to get closer to it.

Mr. HARDING. Thank you.

Mr. WILLIAMS. Did you hear the last pending question?

The question was: Approximately what time did you arrive at the Foley Square Courthouse in New York on the date in question?

Mr. HARDING. I believe I arrived there somewhere between 11 and 11:15 a. m. I didn't look at my watch as to the exact time.

Mr. WILLIAMS. Was the Senate Permanent Investigating Committee holding open session on that morning?

Mr. HARDING. They were.

Mr. WILLIAMS. In what room was that open session?

Mr. HARDING. It was in room 110 on the first floor of the Federal Court building, Foley Square.

Mr. WILLIAMS. Did you go to that room?

Mr. HARDING. I did.

Mr. WILLIAMS. Were you admitted and seated in that room during that hearing?

Mr. HARDING. I was finally admitted. When I arrived there, the doors were closed, and the United States marshal was at the door, evidently indicating that the room was very well filled with spectators. I asked to have permission to go in. My recollection is that he went inside the door and within 5 or 10 seconds came back and said he found a space where I might sit down.

Mr. WILLIAMS. Approximately what time was it when you gained your seat at the hearing?

Mr. HARDING. Well, I still say it was somewhere between 11 and 11:15. I didn't look at my watch as I sat down.

Mr. WILLIAMS. Now, who was testifying at the time you gained entrance to the hearings?

Mr. HARDING. A former major in the United States Army named Peress.

Mr. WILLIAMS. Maj. Irving Peress?

Mr. HARDING. I believe that was his first name, Irving.

Mr. WILLIAMS. Who—

The CHAIRMAN. Mr. Williams at this point the Chair is in some doubt. Was this at a public hearing?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. WILLIAMS. Who was interrogating Major Peress?

Mr. HARDING. At the time I entered the room?

Mr. WILLIAMS. Yes, during the time you sat there.

Mr. HARDING. During the time I sat there he was interrogated, to my recollection, by Mr. Cohn, Senator McCarthy, and I believe a few questions were directed to him by the administrative assistant to General Dirksen, a man I believe named Rainville.

Mr. WILLIAMS. You mean Senator Dirksen?

Mr. HARDING. I meant to say Senator Dirksen.

And also the administrative assistant to Senator Potter, who I believe was a young man named Jones.

Mr. WILLIAMS. Was anyone else there present on the stand or on the bench?

I believe it was held in a courtroom.

Was anyone else of the committee there?

Mr. HARDING. Anyone else from the committee?

Mr. WILLIAMS. Yes.

Mr. HARDING. My recollection is it was only Senator McCarthy there that morning as a member of the committee.

Mr. WILLIAMS. Staff members now, to your knowledge.

Mr. HARDING. Pardon.

Mr. WILLIAMS. Staff members now I am talking about.

Mr. HARDING. Oh, staff members. I believe there was a man named Juliana that was there.

Mr. WILLIAMS. Now, did there come a time during the morning when a question was asked about someone who was seated in the audience?

Mr. HARDING. Yes, there was such a time came.

Mr. WILLIAMS. And was that person who was seated in the audience identified?

Mr. HARDING. Yes. I believe that Senator McCarthy called out the name of Gen. Ralph Zwicker and asked if he would stand up.

Mr. WILLIAMS. Where was he seated with relationship to you?

Mr. HARDING. He was seated in the row directly behind me and just a bit to my right. I would say about—in the Federal—in the first place, let me explain in the Federal court building there are not individual seats there. There are rows of benches. It is not—one person doesn't have any seat right behind another. You might have 3 people sitting in 1 bench, where 2 would be sitting at the bench ahead. But he was sitting at just a point where he was at my right elbow, in back of me.

Mr. WILLIAMS. How was he seated in this chair?

Mr. HARDING. He was seated forward, for most of the testimony, in his chair, with an intent eagerness, I imagine, to listen to all the testimony, with his head bent forward, about the same position that I am in now, I'd say.

The CHAIRMAN. Mr. Williams, may I ask you a question?

Do you intend to offer by this witness what happened in this public hearing?

Mr. WILLIAMS. I don't intend to offer everything that happened, because it isn't relevant, but I intend to offer one incident which happened which I think is very relevant.

The CHAIRMAN. Would it ordinarily be a matter of record, that the reporter would have taken down?

Mr. WILLIAMS. No, sir.

The CHAIRMAN. It was one of those matters independent of the record?

Mr. WILLIAMS. This is not of record.

The CHAIRMAN. I see.

The reason I asked the question: Ordinarily, if it is a matter of record, the record, itself, would be the best evidence.

Mr. WILLIAMS. This is not of record.

The CHAIRMAN. I see.

You may proceed.

Mr. WILLIAMS. Now, can you tell us, so we will have the time fixed, Mr. Harding, approximately what time it was that General Zwicker identified himself, or was identified by Senator McCarthy or Mr. Cohn?

Mr. HARDING. Well, again it would have to be from my best recollection. I didn't look at my watch at the time that Senator McCarthy asked him to stand up, but I would say it was possibly 15 to 25 minutes after I had sat there in the room.

Mr. WILLIAMS. So that you would fix it at about 11:30; 11:35?

Mr. HARDING. Somewhere in there. I mean I don't want to be positive on the testimony as to the exact time it was. It was somewhere in there.

Mr. WILLIAMS. Was there anyone accompanying General Zwicker?

Mr. HARDING. Yes. When I went into my seat, I noticed two other officers of the United States Army. First, I noticed, as I went through, there was one officer who sat there with brigadier general stars on his shoulders. To his right there were two other officers of lesser rank, I believe. They were lieutenant colonels or possibly one of them may have been a full colonel, but my best recollection is they were both lieutenant colonels.

Mr. WILLIAMS. Now, Mr. Harding, did you hear General Zwicker make any remark relative to the chairman of the committee?

The CHAIRMAN. You can answer that yes or no.

Mr. HARDING. Yes.

The CHAIRMAN. Now——

Mr. WILLIAMS. Will you tell the committee what that was, sir?

The CHAIRMAN. Now, just a moment. Let us be sure we have the identification of the general certain before he proceeds to answer that.

Did you know General Zwicker?

Mr. HARDING. Did I know him?

The CHAIRMAN. Yes.

Mr. HARDING. No; I did not know him.

The CHAIRMAN. How was it you came to have the opinion it was General Zwicker?

Mr. HARDING. I came to have the opinion because he stood up right at my right elbow when his name was called, and I didn't think some other general would stand up in the room.

The CHAIRMAN. Just a moment. As I remember, you said Senator McCarthy asked him to stand up.

Mr. HARDING. That's correct, sir.

The CHAIRMAN. And I assume, Mr. Williams, this would be in the record.

Mr. WILLIAMS. That is in the record.

The CHAIRMAN. Yes. I haven't read the record, so I wouldn't know on this particular hearing.

You heard this gentleman, then, make some remark after he had been identified by the chairman and then stood up?

Mr. HARDING. I heard him make the remark after he had identified himself as being General Zwicker; yes, sir.

The CHAIRMAN. All right. You may proceed.

Mr. WILLIAMS. Would you tell the committee what the remark was that you first heard that General Zwicker directed toward Senator McCarthy?

MR. HARDING. I'd be glad to answer that question directly to you, sir, but I would like to respectfully ask that I be given an opportunity to relate the part of the conversation or part of Senator McCarthy's questions to General Zwicker; and, as I remember, General Zwicker's answers to Senator McCarthy—I don't have them verbatim, but I remember them very well.

MR. WILLIAMS. They are, as a matter of fact, of record.

THE CHAIRMAN. That, of course, is the best evidence, and if you want to show that it would still have to be subjected to scrutiny to see whether—

MR. HARDING. If it's in the record—

THE CHAIRMAN. Yes, sir.

MR. HARDING. Those are the few sentences that I heard and, as General Zwicker finished—

THE CHAIRMAN. Now, when you say he finished, you mean—

MR. HARDING. Pardon.

THE CHAIRMAN. You mean he finished answering the question that Senator McCarthy had asked?

MR. HARDING. The last question, or the last statement, let's say. I think the last, as I remember, was a statement by Senator McCarthy directed directly to General Zwicker. It was not a question, it was a statement, as I remember.

THE CHAIRMAN. Now, was General Zwicker still standing or did he sit down?

MR. HARDING. He then sat down.

THE CHAIRMAN. All right. Proceed.

MR. HARDING. As he sat down, his head—I was leaning back in my seat, like I am now, and his head passed my head, within, I would say, 12 to 14 inches of it, and I distinctly heard him mutter, under his breath, "You S. O. B."

MR. WILLIAMS. Now, did you hear any further conversation?

Did you hear—

MR. HARDING. Did I hear—I beg your pardon.

MR. WILLIAMS. Did you hear any further conversation?

MR. HARDING. Within a few seconds thereafter, after he had sat completely down in his seat, I heard him turn to 1 or 2 of the officers to his right—I don't know whether he was directing his remarks to both of them, but at least to one of them—and he said, "You see, I told you this is what we'd get."

MR. WILLIAMS. Now, thereafter, what is your best recollection as to whether you heard any more remarks of that character from General Zwicker?

MR. HARDING. My best recollection is that I heard him mutter once more during the testimony under his breath, but I am unwilling at this time, under oath, to state definitely that I did hear him say it the second time. I think I did, but I will not swear definitely that I did.

MR. WILLIAMS. Now, this was before General Zwicker testified in executive session; was it not?

MR. HARDING. It was the morning of the afternoon at which he had been told by Senator McCarthy that he was going to be called into executive or closed session, whatever you call it.

MR. WILLIAMS. So that General Zwicker had not yet testified as a witness before the committee?

Mr. HARDING. Well, I don't know whether he had or hadn't at some other time, sir, but as of that day he had not.

Mr. WILLIAMS. I ask the Chair to take notice of the fact that General Zwicker's testimony, which is in issue here, did not begin until 4:30 that afternoon in executive session and that the incidents that are being testified to took place in the morning in open session.

Senator STENNIS. Mr. Chairman, at that point—

The CHAIRMAN. Senator Stennis.

Senator STENNIS. It is not clear why Senator McCarthy was calling out for General Zwicker or addressing remarks to him while he was back in the audience.

Mr. WILLIAMS. I think in proper context we ought to read that into the record at this time.

Major Peress was on the stand and he was answering questions or, I should say, refusing to answer questions, and finally, the chairman—and I am reading from page 136—turned and said:

The CHAIRMAN. General Zwicker, may I ask you a question? You can stay right there.

Whenever I served as O. D.—and I think this has been general practice in the Marine Corps, the Navy, and the Army—you normally had access to the encoding and decoding machines. Ordinarily an officer of the rank of major or above must take his stint at encoding or decoding.

Could you tell me whether or not that has been the practice at Camp Kilmer?

Brig Gen. RALPH ZWICKER. It is not.

The CHAIRMAN. In other words, so far as you know, this individual never had access to any confidential or secret material?

General ZWICKER. He did not.

The CHAIRMAN. Your answer is what?

General ZWICKER. He did not.

The CHAIRMAN. Just one other question, General. I did not intend to impose upon you this morning.

His Army file contains reference to his being considered for—and I think I am quoting it correctly—sensitive work in May of 1953. Would you have any idea what that sensitive work was? If you do not know, we will show you the file to refresh your recollection. The file shows that in May, that is, after it was fully known that he was a Communist, the file shows that he was considered for sensitive work.

The file does not show whether he was rejected or not. Just offhand, you wouldn't know what that sensitive work would be?

General ZWICKER. I do not.

The CHAIRMAN. I wonder if you can do this: You are appearing this afternoon in executive session. I would like to have you here to listen to all of this testimony. If you have an aide with you, I wonder if you could have somebody call Camp Kilmer and find out just what the sensitive work was that he was being considered for.

Mr. Peress then interjected:

I might be able to help you on that.

General ZWICKER. Even if I did know, I would not be privileged to tell you, under the Executive order which forbids us to discuss matters of that nature.

Mr. DE FURIA. There is another sentence in there.

The CHAIRMAN. One further sentence, counsel.

Mr. WILLIAMS (reading):

The CHAIRMAN. I may say, General, you will be in difficulty if you refuse to tell us what sensitive work a Communist was being considered for. There is no Executive order for the purpose of protecting Communists. I want to tell you right now, you will be asked that question this afternoon. You will be ordered to make available that information.

And then Mr. Peress speaks.

Is that the testimony you had reference to?

Mr. HARDING. That is the testimony I had reference to; yes, sir.

Mr. WILLIAMS. You may examine.

Mr. CHADWICK. We have no questions, sir.

The CHAIRMAN. No questions.

Mr. HARDING. Am I excused?

The CHAIRMAN. You are excused, Mr. Harding.

Mr. HARDING. Thank you.

(Thereupon, at 11:05 a. m., the committee proceeded in executive session.)

(At 11:49 a. m., the committee being in recess, an announcement was made, as follows:)

Mr. JEX. The committee has asked me to announce that the Chair will change its order from an indefinite recess to a definite recess to 2 p. m., at which time the committee will reconvene for public hearing.

(Thereupon, at 11:50 a. m., the committee recessed until 2 p. m. the same day.)

AFTERNOON SESSION

Thereupon, at 2:07 p. m., the committee reconvened.

The CHAIRMAN. The committee will now be in session.

The photographers will please leave the room. We will let them come back if they put their cameras away.

With reference to the matter which was under discussion when the committee took a recess, the committee will continue a study of this situation and the matter connected with it. The fact involved is involved in the final decision which will be made by the Senate, probably, and in a lesser degree by this committee later on. It is involved in some of the charges which are under consideration. So that matter will not be presented at the moment.

Mr. Williams, do you have any further questions of the witness who was on the stand?

Mr. WILLIAMS. No, sir; I do not.

The CHAIRMAN. You will then be excused.

You may proceed.

Mr. WILLIAMS. Senator McCarthy will stand the stand, sir.

TESTIMONY OF SENATOR JOSEPH R. MCCARTHY

The CHAIRMAN. Do you solemnly swear that the testimony you will give in the matter now pending before the committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Senator MCCARTHY. I do.

The CHAIRMAN. You may proceed.

Mr. WILLIAMS. Mr. Chairman, in the orderly sequence of things, we are going, with the Chair's indulgence, to address ourselves in the first instance to the so-called Zwicker case inasmuch as the committee has heard testimony on that this morning.

Would you please state your full name for the record?

Senator MCCARTHY. Joe McCarthy.

Mr. WILLIAMS. You are the junior Senator from the State of Wisconsin?

Senator MCCARTHY. Right.

Mr. WILLIAMS. Senator, are you presently serving in this, the 83d Congress, as chairman of the Government Committee on Operations, the Senate Committee on Government Operations?

Senator McCARTHY. I am.

Mr. WILLIAMS. Are you also serving as chairman of the Permanent Investigating Committee, which is a subcommittee of that Government Operations Committee?

Senator McCARTHY. I am.

Mr. WILLIAMS. How long have you been so serving?

Senator McCARTHY. Since January of 1953, as our administration took over.

Mr. WILLIAMS. Directing your attention, sir, to 1953, was your committee engaged in an investigation of subversion at Fort Monmouth?

Senator McCARTHY. We were.

Mr. WILLIAMS. In that connection, sir, did you meet the man who testified here this morning, General Lawton?

Senator McCARTHY. I did.

Mr. WILLIAMS. Now, while conducting your investigation into the subject about which I have just alluded to, did there come to your attention a situation that obtained at Camp Kilmer with respect to a Maj. Irving Peress?

Senator McCARTHY. There did.

Mr. WILLIAMS. Who was the commanding general at Camp Kilmer at that time?

Senator McCARTHY. General Zwicker.

Mr. WILLIAMS. Gen. Ralph W. Zwicker, who is the subject matter of one of the charges in this case?

Senator McCARTHY. That is right.

Mr. WILLIAMS. Would you tell the committee, Senator, when, in the first instance, the so-called Peress case came to your attention?

Senator McCARTHY. It came to our attention, Mr. Williams, in November, I believe, of 1953.

Mr. WILLIAMS. At that time, was General Zwicker the commanding general of Camp Kilmer?

Senator McCARTHY. Yes, sir. He became commanding general in July of 1953.

Mr. WILLIAMS. What, if anything, to your knowledge did you or members of your staff do with respect to the information on Major Peress that you have just described?

Senator McCARTHY. We turned all of the information over to Mr. John Adams, legal counsel for the Army.

Mr. WILLIAMS. Can you fix that, sir, in point of time?

Senator McCARTHY. Well, it would be by hearsay. My chief counsel turned it over to him, I think he reported to me, in December. In other words, shortly after we got the information.

Mr. WILLIAMS. Was there any subpoena issued for Major Peress in December of 1953?

Senator McCARTHY. There was not.

Mr. WILLIAMS. What was the next action that was taken by your committee with relationship to this case, and I direct your attention to the early part of 1954, the early part of January.

Senator McCARTHY. On January 4, 1954, my chief counsel again took the matter up with Mr. Adams, called his attention to the fact that they had a man who was a leader in the Communist Party in a rather key position at a port of embarkation and debarkation and suggested that the Army do something about it rather than have our committee go into the matter.

Mr. WILLIAMS. Thereafter, and I refer to January 4, thereafter, what, if any, action, did your committee take with respect to this particular situation at Camp Kilmer?

Senator McCARTHY. Well, when nothing was done when Peress continued to serve, we asked for his appearance before the committee. Request was made on the 26th day of January. He appeared in executive session on the 30th day of January.

Mr. WILLIAMS. Where did he appear? I am calling about geographically.

Senator McCARTHY. Courthouse, Foley Square, New York.

Mr. WILLIAMS. That was on January 30 of 1954 of this year?

Senator McCARTHY. That's right.

Mr. WILLIAMS. Peress was called, as I understand it, in executive session?

Senator McCARTHY. Correct.

Mr. WILLIAMS. Was he interrogated at that time?

Senator McCARTHY. He was in detail.

Mr. WILLIAMS. Who was there present, sir?

Senator McCARTHY. As I recall, Mr. Rainville, the administrative assistant for Senator Dirksen, was present; Mr. Jones, the administrative assistant for Senator Potter; Mr. John—I am not sure if John Adams was present or not. It seems to me he did not come to the executive session meeting. I wouldn't know for certain, however.

Mr. WILLIAMS. Senator, what was the general subject matter of that which Major Peress was interrogated on the occasion of this executive session?

Senator McCARTHY. We asked him about his alleged Communist activities, whether he had graduated from a Communist leadership school, the name of the school was—let's see, what was that name?

Mr. WILLIAMS. Inwood Victory School.

Senator McCARTHY. Inwood Victory School. Refused to answer that on the ground that if he answered it, it might incriminate him; asked whether he was recruiting soldiers at Camp Kilmer; again, the fifth amendment; asked whether he held Communist meetings in his quarters at Camp Kilmer; again refused to answer on the grounds of self-incrimination.

He was asked about a change in duty orders that he got in February, I think, of 1953. He had been scheduled to go to Yokohama, Japan. He applied for a change in duty orders on the ground of hardship. He got that change in duty orders. We thought the circumstances were unusual. The only grounds he had, the only grounds were that his wife and daughter were visiting a psychiatrist. He could not even remember the name of the psychiatrist, and on the basis of that he was given duty in the United States, and I believe the Senators on the committee had letters from any number of young men who had much more pronounced hardship cases, cases of wives on the point of death.

The CHAIRMAN. Mr. Williams, may I inquire, this is preliminary, is it not, to the point?

Mr. WILLIAMS. To the testimony. I think it is necessary to set the backdrop. I am not going to pursue this in detail. I think it is necessary to set the backdrop for General Zwicker's appearance on February 18. That is what I am undertaking to do in these few minutes.

The CHAIRMAN. With that understanding, I am not going to restrict you too much, but we don't want to try that case over.

Mr. WILLIAMS. Now, would you tell us, Senator, in just a few words, what information you developed on this occasion of the executive session, the appearance of Major Peress? You learned he was inducted into the Army January 1, 1953.

Senator McCARTHY. Right.

Mr. WILLIAMS. He came in as a captain, did he not?

Senator McCARTHY. Captain; as a captain.

Mr. WILLIAMS. You found out in August of 1953 that investigations had been conducted of him by the Army in which he had taken the fifth amendment.

Senator McCARTHY. We learned to the best of our knowledge in April of 1953 the FBI had given the Army a complete report on Peress containing practically all the information which we developed at the hearings.

Then in August of 1953 he was given a questionnaire and asked many of the questions which we asked him about Communist activities, and he wrote across the face of the question, "Refuse to answer. Fifth amendment."

In November 1953 he was promoted to major.

Mr. WILLIAMS. He was promoted to major from captain?

Senator McCARTHY. Yes, sir; after it was fully known about all his Communist activities.

Mr. WILLIAMS. At that time was he stationed at Camp Kilmer?

Senator McCARTHY. He was, and General Zwicker was his commanding officer.

Mr. WILLIAMS. How long had he been at Camp Kilmer as of August?

Senator McCARTHY. You mean General Zwicker or Peress? Do you want Peress first?

Mr. WILLIAMS. Peress first.

Senator McCARTHY. Peress went directly from the debarkation point in Washington to Camp Kilmer, and I believe that was in February 1953. So he had been there quite some time.

Mr. WILLIAMS. How long had General Zwicker been commanding general?

Senator McCARTHY. From July 1953.

Mr. WILLIAMS. Now, at the time that Major Peress appeared before you on January 30, of 1954, he was still on active duty at Camp Kilmer; is that correct?

Senator McCARTHY. He was.

Mr. WILLIAMS. As a result of the testimony developed in executive session on that occasion, was a request made for his appearance in open session?

Senator McCARTHY. Yes; that is right.

Mr. WILLIAMS. Do you recall when he was asked to present himself for interrogation and examination in open session?

Senator McCARTHY. I do not recall the date he was asked to appear. He appeared on the 18th day of February.

I might say that in the meantime, Mr. Williams, a rather important occurrence having a direct bearing upon this Zwicker matter, after Peress appeared and refused to tell whether he was recruiting soldiers into the Communist Party, whether he was holding Communist meetings at his home, whether he was a graduate of a Communist leadership

school, whether a Communist helped him to get his change in duty orders, I wrote to Secretary Stevens and suggested that this man be court-martialed.

There were two grounds for the court-martial:

No. 1: When he entered, he signed a statement to the effect that he belonged to no subversive organization, specifically I believe that included the Communist Party.

Under the code, that is the criminal code, that is a felony calling for a prison sentence up to 5 years.

I felt also that his refusal to answer the questions about Communist activities, while this refusal could not be accepted in a criminal court, contrary to the popular conception the use of the fifth amendment in regard to criminal activities can be used in a civil action.

I suggested to Bob Stevens, and I cannot quote the exact language, that here was a chance to serve notice on all officers in the Army that there would be no more coddling of Communists, that if they had any information about Communist infiltration, that they would be expected to give that information to the proper authorities that could be acted upon. That was done.

Mr. WILLIAMS. On what date?

Senator McCARTHY. I do not recall the date the letter was dispatched. It was made public, as I recall, on February 1.

Mr. WILLIAMS. Was that letter written, to the best of your recollection, on the date on which Peress had testified before your committee?

Senator McCARTHY. It was written that evening, as I recall, or the next morning.

Mr. WILLIAMS. Now, in the January 30 executive session—

Senator McCARTHY. Could I add something, Mr. Williams? I do not like to make these answers lengthy, but Secretary Stevens was not there, was not in the country at the time the letter was made public. He arrived back in the States on the 2d of February.

Before he set foot on American soil, Peress was removed from the jurisdiction of the military. When I say removed, I should explain that unless the penalty for a felony is over 5 years, the military does not retain jurisdiction in case of an honorable discharge. In this case the penalty was a 5-year period so they lost jurisdiction.

Mr. WILLIAMS. Your point is that they lost jurisdiction to try him for an offense that he had committed during his service as an officer once they discharged him. They gave him an honorable discharge.

On what date was he honorably discharged?

Senator McCARTHY. On the morning of February 2.

Mr. WILLIAMS. 1954?

Senator McCARTHY. 1954, the morning after my letter to Bob Stevens was made public.

Mr. WILLIAMS. Now, coming to February 18 of 1954, this was the date on which Peress was directed to present himself for open session?

Senator McCARTHY. That is right.

Mr. WILLIAMS. That hearing was set for what time originally?

Senator McCARTHY. I think the hearing was set for 10 o'clock in the morning.

Mr. WILLIAMS. I notice here in the record that it, in fact, did not begin until much later than that.

Senator McCARTHY. The reason for that, Mr. Williams, was that my wife was in a taxicab the night before and broke her ankle in three places.

I was up with her all night and had to take her to the hospital in the morning.

Mr. WILLIAMS. What time did you get away?

Senator McCARTHY. I think it was 11. Let me see, let me look at the record. It was about 11 o'clock. In other words, we were about 1 hour off schedule.

Mr. WILLIAMS. Did you go directly to Foley Square from Flower Hospital?

Senator McCARTHY. I did not go to Flower Hospital. I got Jean in an ambulance and went directly from there to Foley Square.

Mr. WILLIAMS. Who was the first witness heard at that meeting?

Senator McCARTHY. A Ruth Eagle. She was an undercover agent for the New York Police Department, specializing in Communist activities.

In fact, she joined the Communist Party at the behest of the New York Police Department, as I recall.

Mr. WILLIAMS. She identified Major Peress as a section leader in the party in New York.

Senator McCARTHY. She identified him:

1. As a graduate of the Communist leadership school;
2. As a section organizer for the Communist Party.

In other words, as an important functionary of the Communist Party.

Mr. WILLIAMS. Following her testimony, Major Peress was called to the stand, was he?

Senator McCARTHY. Yes; he was called to the stand. That is our practice when somebody is identified as a Communist; we call them to the stand immediately, wherever possible, in order to permit them to admit it or deny it.

Mr. WILLIAMS. Was Peress accompanied by counsel?

Senator McCARTHY. Yes; he was.

Mr. WILLIAMS. Did he respond to the questions that were propounded to him regarding his Communist activities in open session on this morning?

Senator McCARTHY. No; he was very selective in his answers. He answered everything, as I recall, not having to do with Communist activities, but when we got to his Communist activities, why, there was the usual "I refuse to answer on the ground my answer might tend to incriminate me."

Mr. WILLIAMS. Did there come a time in the interrogation of Major Peress when he was asked about an application that he had made while at Camp Kilmer for sensitive work which required a security clearance, an extra security clearance for him?

Senator McCARTHY. Yes, sir; there did come that time, Mr. Williams. The reason for that question was that we had the file. We knew he had applied for security clearance to handle—I do not recall what classification, whether it was secret or confidential work.

Mr. WILLIAMS. Did he respond to the questions that were propounded to him on that subject?

Senator McCARTHY. Yes, he gave us a rather unusual answer when I asked him what sensitive work he was trying to get into. Knowing

he was a Communist, a Communist leader, I was curious to know what type of sensitive work he was trying to get into, and his answer, as I said, was unusual.

He said he was applying for a different type of work on teeth. In other words, it was sensitive teeth he was dealing with, which did not make any sense to me.

Mr. WILLIAMS. Did this provoke a question from someone on the staff during the hearing directed to his commanding general?

Senator McCARTHY. I asked his commanding general if he would tell us what sensitive work this Communist had applied for.

Mr. WILLIAMS. I now direct your attention, Senator McCarthy, to the record which is before you.

Senator McCARTHY. What page?

Mr. WILLIAMS. Page 136, and I ask you if that was the first interrogation of General Zwicker, in either open or closed session, by you or by any member of the staff, or of the committee.

Senator McCARTHY. This was the first interrogation by the committee. However, he had been interrogated by members of the staff, Mr. Jim Juliana, prior to that time.

Mr. WILLIAMS. I will come to that in just a moment.

I now direct your attention, Senator, to the record, page 136, and ask you whether or not you requested General Zwicker to find out what the nature of the sensitive work was, for which Major Peress applied?

Senator McCARTHY. That's right.

Mr. WILLIAMS. Did he respond?

Senator McCARTHY. No; he told me he would not give me that information. If I may quote him verbatim, he said——

The CHAIRMAN. Will you read the question you asked him, as well?

Senator McCARTHY. Yes. I said to him:

I wonder if you can do this: You are appearing this afternoon in executive session. I would like to have you here to listen to all of this testimony. If you have an aide with you, I wonder if you could have somebody call Camp Kilmer and find out just what the sensitive work was that he was being considered for.

General ZWICKER. Even if I did know, I would not be privileged to tell you, under the Executive order which forbids us to discuss matters of that nature.

May I say in connection with this, Mr. Chairman, the order upon which Zwicker relied was not the Presidential order, by an order of the Army, which, according to him, provided that they could not give security information, unless they had permission from the Assistant Chief of Staff.

The CHAIRMAN. Do you have in your possession a copy of that order?

Senator McCARTHY. No, I do not. He did not supply a copy of the order.

I pointed out to him that I thought this was not security information, but asked him, in the event, assuming it was, would he ask the Assistant Chief of Staff of G2 to give him permission to tell us the truth about this matter; and he said, "No, I will not." He refused to ask for permission to give us information, and said, "I would rely upon the order, and though I have information, I cannot give you the information."

Mr. WILLIAMS. To your knowledge, then, or to your knowledge now, is there any Executive order which precluded General Zwicker from

simply stating the nature of those sensitive works for which Major Peress applied?

Senator McCARTHY. Definitely not, on a Truman order or on an Eisenhower order, so far as I know; and I think anyone versed in the law would state that neither applied to this question.

Mr. WILLIAMS. Prior to General Zwicker's appearance before the committee—I am talking about his appearance in the courtroom at Foley Square, which was described for us this morning by Mr. Harding—prior to that time, had you had any member of the committee staff interview General Zwicker?

Senator McCARTHY. Yes, Mr. Jim Juliana had interviewed him.

Mr. WILLIAMS. Do you know how long prior to February 18 that was?

Senator McCARTHY. It was several days prior to that. I would not know the number of days.

Mr. WILLIAMS. In your function as chairman of the committee, was a report made to you as to General Zwicker's interview with Mr. Juliana?

Senator McCARTHY. Yes. I discussed this in detail with Mr. Juliana.

Mr. WILLIAMS. What did you except to develop from General Zwicker when you requested his presence on the 18th of February 1954?

Senator McCARTHY. When he was not under oath, he was talking to Mr. Juliana, and he said——

The CHAIRMAN. Just a moment. I think, Senator, that is hearsay, without question.

Mr. WILLIAMS. I offer it for this reason, Mr. Chairman—and I see the point of your objection, of course. I offer it for this reason. Certainly, in going to the state of mind of the chairman of the committee as General Zwicker took the stand, as you can appreciate, being a lawyer and judge yourself, Mr. Chairman—it is necessary to know what information he had been led to believe he would get from General Zwicker as a result of the interview of the staff.

Now, in every lawsuit we learn, as you know, you cannot interview every witness. We have to rely on other people to interview the witnesses, and they bring us reports as to what the witness will testify to. Sometimes the witnesses "fence." Sometimes they don't say what we are led to believe they are going to say; and that, of course, often affects the vigorousness of the examination which we conduct; such as this morning, here. I had the very experience. I had been led to believe that a witness was going to testify to certain things, and when he took the stand, I was very much surprised.

I think this goes to the state of mind of the examiner, and, for that reason, I respectfully urge you, sir, to allow this to go in.

The CHAIRMAN. You think it has something to do with the question of the conduct of the Senator from Wisconsin?

Mr. WILLIAMS. Yes, sir.

Senator McCARTHY. I may say further——

The CHAIRMAN. Of course, I can readily understand that in a report of that kind, if it were permitted to appear in the record, it would involve a lot of other people and get off into all sorts of diversions. But I am just wondering where we are headed.

Mr. WILLIAMS. I assure you we are not headed anywhere but to a direct answer to a question as to what Senator McCarthy expected this witness would testify to, as a result of the official report made by the staff investigator who interviewed him a few days ago.

The CHAIRMAN. And you are now referring to General Zwicker?

Mr. WILLIAMS. Yes.

The CHAIRMAN. You may proceed.

Senator McCARTHY. Mr. Juliana reported to me—I might say this was an official report from the staff member to the committee—that Zwicker said that he had objected to the discharge; that he talked to the Pentagon—he did not tell me who he talked to at the Pentagon—and that he was ordered to give Peress an immediate discharge after my letter to Stevens came out.

The CHAIRMAN. One further observation in respect to this ruling. It is not permitted in testimony on the theory that what he was being told was the truth, or even as what General Zwicker said; but that it was reported to him by one of his examiners. With that understanding—

Mr. WILLIAMS. Surely.

The CHAIRMAN. I understand you are not claiming that when the agent reported it was the truth, or that General Zwicker even said it?

Mr. WILLIAMS. I do claim it was the truth, but I expect to prove that through others.

The CHAIRMAN. I know, but you are not offering this for that purpose.

Mr. WILLIAMS. Not for this purpose.

The CHAIRMAN. All right.

Senator McCARTHY. In answer, without elaborating—

The CHAIRMAN. Is that classified material?

Mr. WILLIAMS. I think what the Senator has testified to is not classified, if I understand that question. He is able to recount what his investigator told him.

Senator McCARTHY. A personnel matter, not a security matter.

The CHAIRMAN. It is a report of one of your own investigators?

Senator McCARTHY. Right.

The CHAIRMAN. All right, proceed.

Senator McCARTHY. And I might say, also, that this involves personnel matters, not a security matter. In brief, he said that the discharge was the result of a call he had gotten from the Pentagon, ordering him to discharge—in other words, to remove him from the jurisdiction of the Army. I felt that was significant, especially in view of the fact that legal counsel for the Army had spent the previous afternoon with General Zwicker.

The CHAIRMAN. Now, you are permitted to tell what this agent reported to you—not your own feeling. Let us get one thing at a time.

Senator McCARTHY. Yes.

Mr. WILLIAMS. Now, your session, your open session, recessed, according to the record, at 12:15; is that right?

Senator McCARTHY. That is correct.

Mr. WILLIAMS. And that was the last open session that day by the investigating committee?

Senator McCARTHY. That's right.

Mr. WILLIAMS. General Zwicker did not testify until much later in the afternoon; is that correct?

Senator McCARTHY. Yes.

If I can explain why the hearing was held up, I went over to the hospital and arranged for a different room for Jean and got a report on her injury from the doctor, discussed the matters in detail with the doctor, which took some time.

Mr. WILLIAMS. So that General Zwicker, in fact, did not take the stand that afternoon until 4:30?

Senator McCARTHY. That apparently is correct.

Mr. WILLIAMS. Can you tell us who was there present?

Senator McCARTHY. The record shows present: Roy Cohn, chief counsel; Daniel Buckley, assistant counsel; Harold Rainville, administrative assistant to Senator Dirksen; Robert Jones, administrative assistant to Senator Potter, and James N. Juliana, investigator, and my memory would bear that out.

Mr. WILLIAMS. Now, I want to call your attention, Senator—

The CHAIRMAN. May I inquire?

I thought the witness said Senator Dirksen was there; is that right?

Senator McCARTHY. No. Dirksen's administrative assistant was there.

The CHAIRMAN. I beg your pardon. I misunderstood you.

Mr. WILLIAMS. Mr. Rainville was there for Senator Dirksen, Mr. Chairman.

I want to call your attention, Senator, for what I shall call, for purpose of identification, the first key question that was asked of General Zwicker, and I direct your attention to page 146 and to the question:

You know—

and I am quoting you—

that somebody signed or authorized an honorable discharge for this man, knowing that he was a fifth-amendment Communist; do you not?

Now, did you get an immediate response to that question?

Senator McCARTHY. I did not. The answer I got was he thinks he is. I asked him whether he knew the discharge was signed, knowing that he was a fifth-amendment Communist. His answer was:

I know that an honorable discharge was signed for the man.

No answer to the question.

Mr. WILLIAMS. Now, I think this is very important, so I want to ask you some questions about the general context of this line of interrogation; but, before I do, I want you to point out, if you will, Senator, to the committee where you got the first answer to this question.

Senator McCARTHY. I believe it is over on page 148, where I said—and I am not reading the entire question, just the pertinent part:

Now, is it your testimony now that at the time you read the stories about Major Peress that you did not know that he had refused to answer questions before this committee about his Communist activities?

General ZWICKER. I am sure I had that impression.

That was about a page and a half later, thereafter, of cross-examination.

Mr. WILLIAMS. How much later in point of time was it that you got your answer?

Senator McCARTHY. Could I just, Mr. Williams, point out something which has a direct bearing upon this? On page 146—I wonder if the committee has a copy of the testimony.

The CHAIRMAN. We are short of copies. I understand they are out of print, and we haven't been able to get them.

Senator McCARTHY. Let me——

Mr. WILLIAMS. I think it is important——

Senator McCARTHY. I wish the committee had copies of this.

Senator CASE. Mr. Chairman.

Senator McCARTHY. I would like to show the——

Senator CASE. Mr. Chairman.

The CHAIRMAN. Just a moment.

Senator McCARTHY. I am sorry.

The CHAIRMAN. Senator Case.

Senator CASE. Mr. Chairman, may we have the answers to the questions?

A few moments ago the Senator said he received an evasive answer. It seems to me the committee should have the benefit of a direct answer, whatever it may be.

Mr. WILLIAMS. We are going to go through that.

Senator CASE. And let the committee judge whether or not it was evasive.

The CHAIRMAN. Will you inform us what page——

Mr. WILLIAMS. I have directed the Senator's attention at the outset to page 146, and the question I had reference to in my question is a question that appears at about two-thirds of the way down that page in the printed record, quoting the Chairman:

You know that somebody signed or authorized an honorable discharge for this man, knowing that he was a fifth-amendment Communist, do you not?

General Zwicker's answer is:

I know that an honorable discharge was signed for the man.

That is the direct answer, Senator Case.

Now, I am going to ask you, if you will——

Senator McCARTHY. I think I should read the next few questions——

Mr. WILLIAMS. Yes.

Senator McCARTHY. To put this in context.

Question:

The day the honorable discharge was signed were you aware of the fact——

Senator STENNIS. Pardon me. Where are you?

Senator McCARTHY. Page 146. It is the last one-fifth of the page.

The first question was:

Do you know that somebody signed it?

The question I am reading is:

The day the honorable discharge was signed were you aware of the fact that he had appeared before our committee?

General ZWICKER. I was.

And had refused to answer certain questions?

No, sir; not specifically on answering any questions.

Now, I would like to have the committee—this will show why it was necessary to rather vigorously cross-examine this man—jump over to this question:

Did you know that he refused to answer questions about his Communist activities?

Specifically, I don't believe so.

Mr. WILLIAMS. Here.

Senator McCARTHY. Oh, yes. I beg your pardon. I skipped one. One of the first we have is on page 146. He says, "No, sir", when asked whether he knew this man had refused to answer questions.

Then on page 147, about 10 or 12 questions later:

But now you indicate that you did know he refused to—
No.

Mr. WILLIAMS (reading):

But now you indicate that you did not know that he refused to tell about his Communist activities; is that correct?

The answer is:

I know that he refused to answer questions for the committee.

Senator McCARTHY. So that here he changes his story. First he says:

No, sir; I didn't know he refused to answer questions.

Then the next question:

Did you know that he refused to answer questions about his Communist activities?

Specifically, I don't believe so.

Then a number of questions later I said to him, in cross-examination:

Now, is it your testimony now that at the time you read the stories on Major Peress that you did not know that he had refused to answer questions before this committee about his Communist activities?

General ZWICKER. I am sure I had that impression.

So, you find first the General says:

I didn't know he refused to answer any question.

Then he says:

Yes, I knew he refused to answer questions, but not about Communist activities.

And then, finally, after being pressed, he says:

Yes, I am sure I had the impression he refused to answer questions about Communist activities.

I merely cite that, Senators, so you will realize the difficulty I had with this witness and why it was necessary to cross-examine him in detail when he changed his story three times. It was important for me to get the facts here.

Mr. WILLIAMS. Senator, I want to direct your attention to page 147, and also members of the committee, about one-third of the way down the printed page where the chairman asks:

Did you have that general picture?

General Zwickler answered:

I believe I remember reading in the paper that he had taken refuge in the fifth amendment to avoid answering questions before the committee.

And what were the next questions, Senator?

Senator McCARTHY. I said:

About communism.

The answer:

I am not too certain about that.

Do you want me to read on here, Mr. Williams?

MR. WILLIAMS. Yes.

Senator McCARTHY (reading) :

Do you mean that you did not have enough interest in the case, General, the case of this major who was in your command, to get some idea of what questions he had refused to answer? Is that correct?

General ZWICKER. I think that is not putting it quite right, Mr. Chairman.

The CHAIRMAN. You put it right, then.

And here is the answer :

I have great interest in all of the officers of my command, with whatever they do.

Let's stick to fifth-amendment Communists. Let's stick to him. You told us you read the press releases.

I did.

But now you indicate that you did not know that he refused to tell about his Communist activities; is that correct?

Listen to this answer, if you will, especially you lawyers on the committee :

I know that he refused to answer questions for the committee.

Did you know that he refused to answer questions about his Communist activities?

Answer :

Specifically, I don't believe so.

Then, shifting over to the next page, when asked practically the same question, he says :

I am sure I had that impression.

So, you have a general here who, for some unusual reason, is completely evasive. First he says :

I didn't know he refused to answer questions.

Then he says :

Yes, I know he refused to answer questions, but not about communism.

And then later he says :

Yes, I knew he refused to answer questions about communism.

MR. WILLIAMS. Now, would you tell the committee approximately how much time elapsed between the time you first put the question and the time that General Zwicker answered, "I am sure I had that impression"?

Senator McCARTHY. I couldn't give you that in time, Mr. Williams. It was a long, laborious truth-pulling job.

MR. WILLIAMS. Now, General Zwicker, in response to a question that you propounded to him, said that he had read the press releases on the Peress case after Peress' appearance in executive session.

Can you tell the committee when those press releases appeared?

Senator McCARTHY. It was prior to the press release, I believe, of February 1. The press releases dealt almost exclusively with his refusal to answer questions about Communist activities before the committee.

The CHAIRMAN. May I inquire for the purpose of the record, what press releases are you referring to? Whose press releases?

Senator McCARTHY. I am referring, Mr. Chairman, to the letter which I wrote to the Secretary of the Army Stevens in which I pointed

out all of the facts, asked for his court martial and also, Mr. Chairman, we have followed the practice wherever in executive session there are a number of individuals present where there is a lawyer present who can go on and give the story of calling in the press and giving the press the general picture without giving the name of the witness. However, Peress had given his name so that his name was in the press on the 30th of January and the press carried the story about all of his refusals to answer. So there were two stories.

The CHAIRMAN. To be absolutely fair about it, do you know whether or not the newspapers published in full your press release?

Senator McCARTHY. I saw the press releases and they published them in detail, Mr. Chairman.

The CHAIRMAN. In what papers? Of course, we have a lot of papers.

Senator McCARTHY. All the wire services carried the stories and I think they carried very fair and very complete stories.

The CHAIRMAN. Did you supply the general with copies of these press releases? I mean, General Zwicker?

Senator McCARTHY. No; he said he had read the press releases.

The CHAIRMAN. The reason I am asking you these questions is that sometimes people are supplied with a copy of the press release by the person who makes the press release and they get it that way; at other times they probably have to wait and get it in the paper and sometimes the papers do not carry in full all the press releases—at least, I have had that experience.

Senator McCARTHY. Mr. Chairman, the reason Mr. Peress was given no press releases was——

The CHAIRMAN. I don't mean Major Peress; I mean General Zwicker.

Senator McCARTHY. I am sorry—was because I had addressed my letter to the Secretary of the Army; asked him for a court-martial of not only Peress but all of those who were responsible for his promotion, his plush-duty orders, knowing that he was a Communist; and I did not write to Zwicker because I could not conceive, Mr. Chairman, Zwicker taking it upon himself to give an honorable discharge to a man guilty of a felony, guilty of Communist activities.

Mr. WILLIAMS. I want to call the attention of the witness and the Chair to the question at page 148, approximately one-third of the way down the printed page:

The CHAIRMAN. Did you also read the stories about my letter to Secretary of the Army Stevens in which I requested, or rather, suggested that this man be court-martialed, and that anyone that protected him or covered up for him be court-martialed?

General ZWICKER. Yes, sir.

The CHAIRMAN. Is that what you based your answer on that General Zwicker had seen the press release?

Senator McCARTHY. Not only that press story but the previous press story.

Mr. WILLIAMS. I did not say Peress story.

Senator McCARTHY. The press; not only this press story but there was a previous press story about Peress in which the newspapers carried the information about his refusal to answer on the grounds of the fifth amendment.

Mr. WILLIAMS. Now, I want to call your attention, Senator, to a question at page 148, and I am now referring to the last third of the page, of the printed record.

Mr. Cohn asked:

Who did you talk to? You talked to somebody?

And the answer that is reported here emanating from General Zwicker:

No; I did not.

Was that in conformity with or at war with the report that you had received from your investigator, Mr. Juliana?

Senator ERVIN. That seems to be a conclusion rather than evidence.

The CHAIRMAN. I would say to the Senator and also to Mr. Williams that considerable of the material that the Senator is bringing before use is argument and I have not ordered him to desist on that. We would like to get a straight-out statement on evidence, if we can, but I realize the tendency is for lawyers to argue and to testify. I would be guilty of that myself in the same position.

Mr. WILLIAMS. I do not intend to argue the case at this time, I assure you, but I think it is terribly important here for this witness to let us know what the atmosphere was of this proceeding as he went along; and to point out why it was necessary to cross-examine this witness vigorously as he saw it at that time.

The CHAIRMAN. We will permit him to relate the facts. However, we are not inclined to be too strict with the interpretation of the rule but we think we ought to reasonably keep within it.

Senator McCARTHY. The answer is: This is in conflict not only with the report received from Mr. Juliana but also in conflict with the testimony of Major Peress who testified in the record which you have before you that he went in to see Zwicker, and that he asked for an investigation.

Senator ERVIN. Mr. Chairman.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. He is contrasting this evidence with something else out of the record.

Senator McCARTHY. The Peress testimony is in the record.

Senator ERVIN. Let him call our attention to these things and let us draw the conclusions.

Mr. WILLIAMS. That is what we are trying to do, Senator Ervin, but it is perfectly impossible to portray what was in the mind of the cross-examiner unless we ask him the questions which motivated his interrogation and which motivated his cross-examination of General Zwicker as we are proceeding.

I know of no other way to put defensive material in on this issue. So I must ask him about evasiveness on the part of General Zwicker and about the conflicts in the testimony of General Zwicker with other sworn testimony in the record and with the report that he had received about what General Zwicker would testify to when he was called before the committee.

I am sure that Senator Ervin, as a lawyer, has tried many cases and has sat on the bench and can appreciate what goes on in the mind of an examiner when he is confronted with answers which he is led to believe which would be otherwise.

Senator ERVIN. He has testified as to what he had been led to believe.

Mr. WILLIAMS. Yes, sir.

Senator McCARTHY. Let me read the record.

Senator ERVIN. Wasn't the statement made? I think we can assume that we have enough memory to remember some of these things.

Senator McCARTHY. Let me read the record.

The CHAIRMAN. Just a moment; let Senator Ervin finish.

Mr. WILLIAMS. Senator Ervin, the reason I am calling this to your attention is that the part of the record which we are now about to offer has not heretofore been introduced in evidence, so I don't assume that you have read it.

The CHAIRMAN. Senator Ervin, will you get a little closer to your microphone? It is difficult for us to get your words. The microphones are not too sensitive and it means we have to get rather close to them.

Senator ERVIN. I may have misconstrued the evidence but what I understood was—you were asking the Senator whether a certain thing was in harmony with what he had been led by Mr. Juliana to expect the witness would testify to.

Mr. WILLIAMS. That was one of my questions, Senator. The question now, what I am addressing the witness' attention to is the conflict between this testimony and the testimony of the witness who had testified just previously to him.

Senator ERVIN. You are putting both together, as I understood it, though. The point I was making, the things you already testified you would agree for us to draw conclusions as to.

Mr. WILLIAMS. I appreciate your ability to draw the conclusions if the part I had reference to were in the record, but it is not in here; that is why I want to introduce it at this time.

Senator McCARTHY. Could I read the Peress testimony that I referred to?

The CHAIRMAN. Are you going to offer that in evidence?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Why not do it now and we will have it before us.

Mr. WILLIAMS. Yes, sir, that is what I want to do.

Senator McCARTHY. Can I read it?

The CHAIRMAN. If you will read it all without interruptions so we can get it; then you can make your comment.

Mr. WILLIAMS. Thank you, sir.

Senator McCARTHY. As I said, Mr. Chairman, this was in conflict with Peress's testimony and I would like to read that testimony now on page 125.

The CHAIRMAN. Just a moment, now; page 125. That was in the public hearings?

Senator McCARTHY. Public session.

The CHAIRMAN. Was General Zwicker there?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. When this testimony was given?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. I mean the witness. I was asking the question of the witness, Mr. Williams.

Senator McCARTHY. Yes, sir; he was there.

I am reading, Mr. Chairman, from the third question from the bottom.

The CHAIRMAN. Who is the highest ranking officer with whom you spoke after your appearance before the committee?

Mr. PERESS. General Zwicker.

The CHAIRMAN. General Zwicker? What conversation did you have with General Zwicker?

And the record shows that the witness conferred with his counsel. He says:

Would you repeat that question, please?

The CHAIRMAN. Will the reporter read the question?

(The reporter read from his notes as requested.)

which would have been, "What conversation did you have with General Zwicker?"

Mr. PERESS. I don't recall the exact word-for-word conversation. I requested of General Zwicker, after the hearing before you on January 30, when I saw him on February 1, that an inquiry be made into these charges, that the newspapers had lambasted me with on Sunday and Monday.

The CHAIRMAN. Did you tell him whether or not you were a Communist?

(The witness conferred with his counsel.)

Mr. PERESS. I decline to answer that question on the grounds——

The CHAIRMAN. You wanted an inquiry made as to whether or not you are a Communist; is that correct?

(The witness conferred with his counsel.)

Mr. PERESS. I wanted an inquiry of my conduct at Camp Kilmer.

The CHAIRMAN. Did you want the inquiry to include the question of whether or not you had been holding Communist meetings at your home, whether you had attended a Communist leadership school, whether you had been recruiting military personnel there into the Communist conspiracy? Did you want that included?

Senator McCARTHY. Again the record shows the witness conferred with his counsel.

Then to go on reading on page 126, just about the middle of the page, Mr. Peress said:

I could not tell them what to inquire about, but I asked for an inquiry of the charges generally. I didn't specify as to which charges to inquire into and which not to inquire into.

And Mr. Chairman, I pointed that out, because this is important, if I may, not merely because it is in contradiction, if I may, with Zwicker's testimony, but also this indicates that if Peress were not perjuring himself, then he was not asking for——

Senator CASE. Mr. Chairman, is it not for the committee to determine for what it is important? Let us get the evidence and let the committee draw the conclusions.

Mr. WILLIAMS. We are anxious to call these things to the committee's attention, Senator, so that the committee can better understand what was in the mind of the cross-examiner as he pursued his inquiry with this witness.

The CHAIRMAN. Have the Senator finish the reading of the testimony that he wants to read. I suggested that and I thought that was to be the arrangement, that he would read it through and then make such comments as would be within the rule of evidence.

Mr. WILLIAMS. Yes, sir.

Senator McCARTHY. That is all of the Peress testimony that I have in mind.

If I may say this, Senator: In answer to a question as to why I commented on this, I have been accused of the——

Senator CASE. I beg the pardon of the Senator. I did not ask why you commented on it. I just suggested that the comment was in the nature of a conclusion and the committee should draw the conclusions.

Senator McCARTHY. Would you bear with me for one minute, Senator Case?

I have been accused of abusing General Zwicker. I am showing here that his testimony is in complete conflict with other testimony taken under oath that day, and in conflict with the reports gotten from the investigation.

Senator CASE. This Senator and the committee is interested in seeing the conflicts.

Senator McCARTHY. Very well.

Mr. WILLIAMS. Senator, I want to call your attention now, sir, to page 149 of the record, at the bottom, and I ask you to read that question and the answer that immediately follows.

Senator McCARTHY (reading):

The CHAIRMAN. Let me ask this question: If this man—
meaning Peress—

The CHAIRMAN. Will you please indicate where you are starting?

Senator McCARTHY. The last question on page 149:

Let me ask this question: If this man—
meaning Peress—

after the order came up, after the order of the 18th came up, prior to his getting an honorable discharge, were guilty of some crime, let us say that he held up a bank or stole an automobile—and you heard of that the day before—let us say you heard of it the same day that you heard of my letter—could you then have taken steps to prevent his discharge, or would he have automatically been discharged?

General ZWICKER. I would have definitely taken steps to prevent discharge.

Mr. WILLIAMS. Now, Senator, pursuing this so that we have the natural course of your line of interrogation, I want to direct your attention to the question that is propounded one-fourth of the way down page 150, beginning with the last sentence.

Senator McCARTHY. "You said"? Oh, I see, I will read that now:

The CHAIRMAN. Let us say he went out and stole \$50 the night before.

General ZWICKER. He wouldn't have been discharged.

The CHAIRMAN. Do you think stealing \$50 is more serious than being a traitor to the country as part of the Communist conspiracy?

General ZWICKER. That, sir, was not my decision.

The CHAIRMAN. You said if you learned that he stole \$50, you would have prevented his discharge. You did learn something much more serious than that. You learned that he had refused to tell whether he was a Communist. You learned that the chairman of a Senate committee suggested he be court martialed. And you say if he had stolen \$50, he would not have gotten the honorable discharge. But merely being a part of a Communist conspiracy, and the chairman of the committee asking that he be court martialed, would not give you grounds for holding up his discharge. Is that correct?

General ZWICKER. Under the terms of this letter, that is correct, Mr. Chairman.

Mr. WILLIAMS. Now, thereafter, did you ask the general whether there was anything—

Senator McCARTHY. Could I read the next question, Mr. Williams; I think it is pertinent.

Mr. WILLIAMS. Yes, sir.

Senator McCARTHY. This is the statement by the chairman:

That letter says nothing about stealing \$50, and it does not say anything about being a Communist. It does not say anything about his appearance before our committee. He appeared before our committee after that order was made out.

Do you think you sound a bit ridiculous, General, when you say that for \$50,

you would prevent his being discharged, but for being a part of the conspiracy to destroy this country, you could not prevent his discharge?

And may I say, Mr. Chairman, I think he looked extremely ridiculous.

Mr. WILLIAMS. Did you ask him whether there was anything in the letter on the Peress discharge which gave him authorization to hold up the discharge for criminal conduct?

The CHAIRMAN. Just a moment before you answer that. The letter itself will be the best evidence. Do you have a copy of that letter?

Senator McCARTHY. I do not.

The CHAIRMAN. Was one offered to you at that time?

Senator McCARTHY. I was allowed to read it at that time. I think it was handed back to the General.

The CHAIRMAN. You did not receive it in evidence? You did not make it a part of the record?

Mr. WILLIAMS. The general was asked about it and answered fully.

Senator McCARTHY. I do not believe it is a part of the record.

The CHAIRMAN. Ordinarily it is better if we have the letter so that we can know what it is about.

Mr. WILLIAMS. I wish we had it, Mr. Chairman.

The CHAIRMAN. I think possibly we can get a copy of it. I thought probably the Senator had received it at that time.

Senator McCARTHY. I do not believe it was produced.

Mr. WILLIAMS. I would certainly appreciate it if the chairman would exercise his prerogative in obtaining a copy of the letter and placing it into this record.

The CHAIRMAN. We will attempt to get a copy of that letter and will put it in the record as soon as we find it.

Mr. WILLIAMS. Senator, without going over this transcript question by question, let me ask you this by way of recap and by way of summary: Was it General Zwicker's position as he testified here that if he had learned that Major Peress had stolen \$50, he could have stopped his discharge and would have stopped his discharge, but the knowledge of the fact that he had been a member of the Communist Party and had falsified his Army affidavits on that subject, that knowledge was not enough to preclude the honorable discharge that was given to him on February 1?

Is that a fair statement of his position on this record?

The CHAIRMAN. That is calling for the conclusion of a witness and is more or less in the nature of argument.

Can we get to the facts as they appeared?

I suggest, Mr. Williams, we ought to confine ourselves to the facts and not make arguments.

Mr. WILLIAMS. Mr. Chairman, the trouble with these facts are that you cannot state them without their sounding like a powerful argument.

The CHAIRMAN. Well, the record itself, I think, is a pretty good evidence and is probably the best evidence as to what was said and done. If there was anything else that was done or said that does not appear in the record, that can be given to the committee.

Mr. WILLIAMS. What I was trying to do was to cover a couple of pages of this colloquy by one yes or no answer and then get to the part in dispute here.

The CHAIRMAN. Obviously it calls for an argument.

Senator McCARTHY. Could I read the question that perhaps answers Mr. Williams' question which appears at the bottom of page 151, the last question, Mr. Chairman?

The CHAIRMAN. You may read it.

Senator McCARTHY. It reads as follows:

The CHAIRMAN. Let's say one of the trusted privates in your command came in to you and said, "General, I was just downtown and I have evidence that Major Peress broke into a store and stole \$50." You would not discharge him until you had checked the facts, seen whether or not the private was telling the truth, and seen whether or not he had stolen the \$50?

General ZWICKER. No, I don't believe I would.

I would make a check, certainly, to check the story.

Mr. WILLIAMS. Now, I want to ask you this, Senator: Did there come a time when you asked General Zwicker to state his position on the overall policy which permitted this kind of discharge to be made in the light of the known facts at the time it was made?

Senator McCARTHY. I did.

Mr. WILLIAMS. I direct your attention to page 152 and I ask you if you will read that question which immediately precedes the colloquy which is in dispute here.

Senator McCARTHY. You refer to the last question on page 152?

Mr. WILLIAMS. Yes, sir.

Senator McCARTHY (reading):

The CHAIRMAN. Let us assume that John Jones is a major in the United States Army. Let us assume that there is sworn testimony to the effect that he is part of the Communist conspiracy, has attended Communist leadership schools. Let us assume that Maj. John Jones is under oath before a committee and says, "I cannot tell you the truth about these charges because, if I did, I fear that might tend to incriminate me." Then let us say that General Smith was responsible for this man receiving an honorable discharge, knowing these facts. Do you think that General Smith should be removed from the military or do you think that he should be kept on in it?

Mr. WILLIAMS. Did you add to the hypothesis of that question on page 153?

Senator McCARTHY. I added to it the fact that we are referring to General Smith, who originated the order directing the separation and not a general who was merely following out orders.

The CHAIRMAN. May I ask at this point, so it will be clear as we go along, Senator, since we do not have the letter here, did not the letter direct General Zwicker to release this man?

Senator McCARTHY. It directed honorable discharge for this man within a period of 90 days. It gave, it apparently gave Peress the discretion to decide when he would be released, and that is why, Mr. Chairman, I read the testimony of Mr. Peress when he said he went in.

I did not ask for his release. I asked for an inquiry.

Zwicker knew that there could be no inquiry after his release. Therefore, it was not Peress who asked for the discharge, if we can believe Peress.

Of course, I might say I do not believe a Communist under oath.

The CHAIRMAN. That is hardly material here. Probably a lot of people would agree with you on that. What we are trying to get at are the material facts in this inquiry.

Mr. WILLIAMS. This question that you posed to General Zwicker contained the hypothesis at page 152 and an added hypothesis on page 153.

Senator McCARTHY. That is right.

Mr. WILLIAMS. You are asking him about his attitude toward a general who originated the order that gave an honorable discharge to a known Communist after he had taken the fifth amendment before your committee; is that right?

Senator McCARTHY. That is right.

Mr. WILLIAMS. Did General Zwicker answer that question immediately?

Senator McCARTHY. No; he claimed he did not understand it.

You will notice on page 153, let me see:

The CHAIRMAN. The reporter will repeat it.

And then a few lines down further it says:

(The question was reread by the reporter.)

So that it was repeated twice.

Mr. WILLIAMS. This was the third time; was it?

Senator McCARTHY. Yes; this was the third time it was repeated.

Mr. WILLIAMS. Let me ask you this question:

What was General Zwicker's answer as to whether or not the General who originated the order, the policymaking general who originated the order giving the honorable discharge to an officer who was a member of the Communist Party who had taken the fifth amendment while in the Army and before his discharge, what was his answer with respect to what should be done concerning that situation, that particular general?

Senator McCARTHY. Mr. Williams, let me say this question does not contain all the facts I asked the General. I asked him:

* * * Let us assume that there is sworn testimony to the effect that he is part of the Communist conspiracy, has attended Communist leadership schools. Let us assume that Maj. John Jones is under oath before a committee and says, "I cannot tell you the truth about these charges because, if I did, I fear that might tend to incriminate me."

And then I say:

The CHAIRMAN. Let us say he is the man who signed the orders. Let us say General Smith is the man who originated the order.

I asked whether he should be removed from the military.

And then down in the middle of page 153 the answer of General Zwicker is given as:

I do not think he should be removed from the military.

Mr. WILLIAMS. What did you say in response to that? Will you read that?

The CHAIRMAN. Let me be clear on that. Who are you speaking of who should be removed from the military? Is this Peress or the General?

Senator McCARTHY. I said:

Let us assume that John Jones is a major in the United States Army. Let us assume that there is sworn testimony to the effect that he is part of the Communist conspiracy, has attended Communist leadership schools. Let us assume that Maj. John Jones is under oath before a committee and says, "I cannot tell you the truth about these charges because, if I did, I fear that might tend to incriminate me." Then let us say that General Smith was responsible for this man receiving an honorable discharge knowing these facts. Do you think that General Smith should be removed from the military or do you think he should be kept on in it?

The CHAIRMAN. That is what I wanted cleared up, whether you were referring to the Major or General Smith being removed.

Senator McCARTHY. I refer to the General. I make it clear on page 153 that I am not referring to a general obeying orders but one originating orders.

The CHAIRMAN. The purpose of that question, obviously, was to get the attitude of General Zwicker with respect to some other general.

Senator McCARTHY. It was to find out, Mr. Chairman, whether there was Communist infiltration, whether it was condoned, whether the commanding officer condoned it and allowed an honorable discharge.

I wanted to get his attitude, and that is part of the Government Operations Committee, to investigate efficiency, economy; well, intelligence, if you please, of those operating in the Government at all levels, and I was concerned to find out why they allowed it to continue. I wanted to get the attitude of this general who was the commanding officer.

And he said:

I do not think he should be removed from the military.

And then you asked for my answer to that. I said, which appears near the bottom of page 153:

The CHAIRMAN. Then, General, you should be removed from any command. Any man who has been given the honor of being promoted to general and who says, "I will protect another general who protected Communists" is not fit to wear that uniform, General. I think it is a tremendous disgrace to the Army to have this sort of thing given to the public. I intend to give it to them. I have a duty to do that. I intend to repeat to the press exactly what you said. So you know that. You will be back here, General.

Mr. WILLIAMS. Now then, did you say, "You are not fit to wear the uniform"?

Senator McCARTHY. No, I said he was not fit to wear the uniform of a general, and I think he was not. I think any man who says that it is right to give honorable discharges to known Communists is not fit to wear the uniform of a general.

I said it then. I will say it now. I will say it again. I feel that as strongly as I feel anything.

Mr. WILLIAMS. Has this statement been quoted, or should I say misquoted, to read frequently "Is not fit to wear the uniform"?

Senator McCARTHY. Yes, it has been quoted to that effect.

Mr. WILLIAMS. By that statement were you impugning his judgment, or were you impugning his loyalty?

Senator McCARTHY. Not his loyalty. He might be completely loyal and feel that Communists could get honorable discharges.

I felt that his judgment was bad beyond words when we have such a tremendous military force spending billions of dollars to defend this country against communism, and then have a general say in effect: "It is all right to give Communists honorable discharges."

Mr. WILLIAMS. Did General Zwicker thereafter in the interrogation change his position?

Senator McCARTHY. Yes, he did.

Mr. WILLIAMS. Would you point that out?

Senator McCARTHY. On page 154 he says, or, rather, I said:

Do you think that the higher authority would be guilty of improper conduct?
General ZWICKER. It is conceivable.

The CHAIRMAN. Do you think they are guilty of improper conduct here?

General ZWICKER. I am not their judge, sir.

The CHAIRMAN. Do you think to order the honorable discharge for a Communist major was improper conduct?

General ZWICKER. I think it was improper procedure, sir.

Mr. WILLIAMS. Then I call your attention to page 154, immediately above that where you say, "Let me ask one question."

Will you read that colloquy?

Senator McCARTHY (reading):

Let me ask one question.

In other words, you think it is proper to give an honorable discharge to a man known to be a Communist?

General ZWICKER. No, I do not.

Senator STENNIS. Where is that, please?

Senator McCARTHY. That is on page 154, about one-fourth of the way down the page.

Mr. Cohn asked the question. I beg your pardon; the Chairman asked the question.

The CHAIRMAN. Senator, just so we will not miss getting all of this matter before us so that we may properly evaluate it, I call your attention to page 152, after the long question when you were talking about John Jones as a major, maybe you omitted the question intentionally, but you did not read General Zwicker's answer when he said:

He should be by all means kept if he were acting under competent orders to separate that man.

Senator McCARTHY. Yes, but then I pointed out, Senator, that I referred to, I said, to the man who originated the order directing the separation.

Mr. WILLIAMS. The question as shown on page 153, and as read by the reporter over twice was that the question was directed to the man who originated the order, not the man who was acting under competent orders. That was the purpose of the clarifying question at page 153, the man who originated the order, and that was the question posed the next two times on that page to which the final answer was given, Senator.

I want to call your attention in this record to page 155. Was there a question propounded again to General Zwicker as to whether he had talked to anyone in Washington about the Peress case?

Senator McCARTHY. Yes, about one-fourth of the way down the page you will find the question:

Did you talk to anyone in Washington?

General ZWICKER. No, sir, about this case.

Mr. WILLIAMS. The next question is what?

Senator McCARTHY (reading):

Within the week preceeding his discharge?

General ZWICKER. No, sir.

Mr. WILLIAMS. Senator, I want to ask you to describe if you will in the most accurate manner, but in a very brief time the demeanor, the attitude, of this witness as he testified before the committee.

Senator McCARTHY. I would say he was one of the most arrogant, one of the most evasive witnesses, that I have ever had before my committee, one of the most irritating.

The CHAIRMAN. Just what did he do, other than answer the questions? Was there something with respect to his manner? We have the record before us as to what he said. It is somewhat in the nature of a conclusion, but if you can get us some of the facts that helped you to arrive at that conclusion, we would appreciate it, because we did not see it. We were not there.

Senator McCARTHY. Mr. Chairman, you have been a judge for quite some time. It is impossible to describe in detail the arrogance of a witness. He shows it when he appears before a committee. He displayed it that morning when he sat in the audience calling me a S. O. B. because—

The CHAIRMAN. You did not know about that.

Senator CASE. Mr. Chairman.

The CHAIRMAN. You did not know about that at the time you were examining him.

Senator McCARTHY. I did not, but the attitude was in complete keeping with it, Mr. Chairman. All you do is to look for demeanor of a witness, his attitude, his evasiveness, and you know as a judge and as a lawyer that you cannot put your finger on specific items. You have got to sum the whole attitude up in one parcel, and I merely mentioned the morning because I knew about that, to show that his attitude in the afternoon was in keeping with his attitude in the morning. His attitude on the stand was about the same as in the morning; in other words, that the chairman was an S. O. B. and he wouldn't answer unless he had to.

The CHAIRMAN. Of course, we heard the other witness. You are assuming, of course, that what he said was the truth. We do not know all of the meaning that he had in connection with it. At any rate, that is before us, to be considered. In all good faith, I asked if there were anything in his mannerism that you could give us as a fact, what he did—his tone, and a lot of things, I mean, which might tend to make a man conclude that he was arrogant.

I mean, aside from the answers that he gave, the factual matters with the statements and the answers, themselves—I wonder if there was anything in his physical appearance or his physical action at the time, that you used as a basis for concluding that he was arrogant.

Senator McCARTHY. Mr. Chairman, all I can say is that his whole attitude when you talk with him, in connection with his refusal to answer questions and his evasiveness, you would get the picture, but you cannot get it from the printed record; and all I can say is, the full attitude was one of complete arrogance, complete contempt of the committee.

Mr. WILLIAMS. Mr. Chairman, I have completed my direct examination. I urge and invite the committee members to cross-examine Senator McCarthy vigorously on this subject. I believe that a vigorous cross-examination is the greatest instrument that has ever been devised for eliciting the truth; and I turn him over to you, sir, as your witness.

The CHAIRMAN. I think we may expect that members of the committee will be given an opportunity to cross-examine with some vigor.

However, I think we will place some limitations, not on the degree of vigor which they may use. I do not think I have to pass on that. But I think, possibly before they start—I assume you meant that the committee counsel could question, as well.

Mr. WILLIAMS. Oh, surely.

The CHAIRMAN. So probably, unless members of the committee want to talk now, or proceed to the examination—and I will ask them if they do.

Senator STENNIS. Mr. Chairman, I have no questions, now, but before we leave this record here, do I correctly understand that this testimony now of General Zwicker, and the examination by Senator McCarthy, is all in the record? If it is not, I think it should be.

Mr. WILLIAMS. I think so, too, Senator.

Senator STENNIS. Because that is the only way we have of getting the picture all together. Is it already in, Mr. Chairman?

The CHAIRMAN. A good deal of it is in the record. A good deal of what seemed to be pertinent material at the time was placed in the record the other day, when counsel was reading from this record.

Senator STENNIS. As I recall, the attorneys for the committee placed in the record Senator McCarthy's report. I feel that it all ought to go in the record.

The CHAIRMAN. You mean this entire printed hearing?

Senator STENNIS. Well, there is a viewpoint that is missed unless it is in there.

The CHAIRMAN. Some of it may be considered to be irrelevant and immaterial, if we eliminate that.

Mr. WILLIAMS. It is my suggestion that we offer the Peress testimony in open session, and the Zwicker testimony in executive session in toto, and I think we shall then have the whole picture. Mr. de Furia indicates there is no objection.

The CHAIRMAN. I think that offer will be accepted. We have most of it now.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. To be sure we have got it all, we will accept that offer and will print all the Peress testimony, in the open hearing, and the Zwicker testimony in the executive hearing.

Mr. WILLIAMS. Thank you, Mr. Chairman.

Senator STENNIS. Let all the Zwicker testimony appear in one place, in the present record, as it does in this printed record before us. That is the only way to get it into the record.

The CHAIRMAN. That is just what we will do, whenever it appears. It should appear in the record, about now, on that point.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. So the testimony of those two men that I refer to will be received in evidence.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. As a part of the record.

Senator STENNIS. Certainly. I thank you.

The CHAIRMAN. So that will cover that. Thank you for the suggestion.

The testimony of Major Peress and of General Zwicker is as follows:

TESTIMONY OF MAJ. IRVING PERESS, ARMY DENTAL CORPS,
CAMP KILMER, N. J., ACCOMPANIED BY STANLEY FAULKNER,
ATTORNEY

The CHAIRMAN. Major, would you raise your right hand and be sworn, please.

In the matter now in hearing, do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Major PERESS. I do.

The CHAIRMAN. Will counsel identify himself for the record?

Mr. FAULKNER. Stanley Faulkner, 9 East 40th Street, New York City.

The CHAIRMAN. And would you give your telephone number in case the staff has to get in touch with you?

Mr. FAULKNER. Lexington 2-7780.

Mr. COHN. Could we get your full name?

Major PERESS. Irving, I-r-v-i-n-g Peress, P-e-r-e-s-s.

Mr. COHN. Where do you reside?

Major PERESS. 6139 79th Street, Middle Village, N. Y.

Mr. COHN. Now, what is your current rank in the Army?

Major PERESS. Major.

Mr. COHN. For how long a period of time have you held that rank?

Major PERESS. Almost 3 months.

Mr. COHN. And when did you enter the Army?

Major PERESS. On active duty, you mean?

The CHAIRMAN. Let me interrupt. Do I understand you were promoted 3 months ago?

Major PERESS. That is right. On November 2, 1953.

The CHAIRMAN. When did you go on active duty?

Major PERESS. January 1, 1952.

The CHAIRMAN. A little over 2 years ago?

Major PERESS. No, I am sorry, January 1, 1953.

Mr. COHN. Now, what were the circumstances of your going on active duty. Did you apply or were you called?

By the way, any time you want to you can consult with counsel. He can talk to you or nudge you and you can do likewise. I don't know if you have been before the committee before.

(Witness consults with counsel.)

Major PERESS. I registered under the doctor draft law; I think it was the 1950 law. I was called up in July of 1952 to take a physical examination, which I passed, and I was tendered a commission in approximately October 1952 as captain. I got orders to go on active duty January 1, 1953.

Mr. COHN. Did you apply for a commission as captain?

Major PERESS. Yes, the procedure was the draft board notified you of your impending induction and between the enlistment on my part—the coinciding of dates coming in 2 weeks—I was informed the enlistment was not recognized so that I went under the normal channels of draft induction.

Mr. COHN. Then you applied for a commission, and after you filled out certain application forms, that commission was tendered as captain. Is that right?

Major PERESS. Yes.

Mr. COHN. And you accepted the commission.

Major PERESS. I did.

Mr. COHN. Where did you enter on duty?

Major PERESS. Fort Sam Houston, Tex.

Mr. COHN. For how long a period were you down there?

Major PERESS. I left home January 1 and left there February 7.

Mr. COHN. Where did you go from Fort Sam Houston?

The CHAIRMAN. Let me interrupt. Apparently, Major, the situation was—see if I understand you correctly. Correct me if I am wrong. You did register for the doctors' draft.

Major PERESS. Every physician and dentist had to register under the 1951 law.

The CHAIRMAN. Then there came a time when the draft board notified you you had been called up. You were put in a certain priority depending on whether the Government had helped finance your education or depending on the time you served in the last war.

Major PERESS. Yes.

The CHAIRMAN. After you were classified in one of those priorities, you attempted to enlist in the Army. They told you due to the proximity of enlistment to the time of your classification, they hadn't recognized your enlistment and you were about to be inducted; then you applied for a commission—they allow you sufficient time to apply for a commission—a commission of captain was tendered to you and you accepted it. Is that right?

Major PERESS. Yes, sir.

The CHAIRMAN. In effect you attempted to volunteer for the service. Is that correct.

Major PERESS. In effect, yes, sir.

The CHAIRMAN. How did you serve in the last war?

Major PERESS. I had a commission tendered to me and at the last moment they discovered I had a physical defect which they would not waive and they would not accept me.

The CHAIRMAN. But your physical defect was waived on this occasion?

Major PERESS. That is right.

The CHAIRMAN. Had the Government financed, in any way, your education?

Major PERESS. No.

Mr. COHN. From Fort Sam Houston, where did you go after that?

Major PERESS. I had orders to go to Yokohama, Japan. When I got to the port of embarkation at Fort Lewis, Wash., I had an emergency leave to come back home.

The CHAIRMAN. Was it a medical question?

Major PERESS. Yes, sir, a medical question.

I came home and had further communication with the Department of Defense, the Pentagon, I received new orders to report to Kilmer.

Mr. COHN. Whose illness was it?

Major PERESS. My wife and daughter.

Mr. COHN. Now, you said something about the Department of Defense. Who did you see in the Department of Defense?

Major PERESS. Well, I guess I went through the Adjutant General's Office in the Pentagon.

Mr. COHN. You wrote to the proper authorities and requested a change of assignment?

Major PERESS. They did.

Mr. COHN. Where did they station you?

Major PERESS. Camp Kilmer, N. J.

Mr. COHN. How far is that from New York?

Major PERESS. Thirty miles.

The CHAIRMAN. See if I have this picture correctly in mind. You were assigned to Yokohama; you got as far as the port of embarkation and received emergency leave because of illness on the part of your wife and daughter.

Major PERESS. That is right.

The CHAIRMAN. When you arrived home you applied for a transfer to some other station in the United States?

Major PERESS. I applied for what is called compassionate reassignment.

The CHAIRMAN. Who did you correspond with on this subject?

Major PERESS. The Adjutant General. I don't know who handled it in the office—in the Office of the Adjutant General.

The CHAIRMAN. Did you have correspondence other than through official channels?

(Witness consulted with counsel.)

Major PERESS. Before I answer that question, Mr. Senator, I would like to state, at this time I am on active duty with the Army and under the sole jurisdiction of the Army and the President, who is the Commander and Chief of the Armed Forces, and do not feel that I come under the jurisdiction of this committee.

The CHAIRMAN. Did you have any correspondence with anyone with regard to the change of your orders other than through official channels?

Major PERESS. In regard to the change of being assigned to Yokohama to being assigned to the United States, did I have correspondence—you mean did I write to friends?

The CHAIRMAN. You understand the question. Did you have correspondence other than through official channels?

Major PERESS. The answer is "No."

The CHAIRMAN. In other words, no Congressman, no Senator, no one to your knowledge intervened in your behalf to promote your change of orders?

Major PERESS. Well, I wrote to nobody, but my wife asked my Congressman about the advice of how to proceed. There was no official correspondence, no intervention. He merely suggested to us the Red Cross as a means of coming back from Fort Lewis, Wash., to New Jersey.

The CHAIRMAN. Who was your Congressman?

Major PERESS. I believe his name was Holtzman.

The CHAIRMAN. And he is from where?

Major PERESS. Queens, where I live.

The CHAIRMAN. You say you had correspondence with him when you were on your way to Yokohama?

Major PERESS. I had no correspondence with him.

The CHAIRMAN. Who did have correspondence with him?

Major PERESS. Well, I don't remember exactly but my wife either called him or wrote to him because he lives in the neighborhood and got a telegram back from him to the effect that I get in touch with the Red Cross in order to secure time that my appeal be considered.

As it was, because of the element of time, nothing could be done and I would have had to go to the Far East and take it up in the Far East. He suggested the Red Cross as an instrument of delaying the transfer overseas.

The CHAIRMAN. Do you have copies of the correspondence and the application you made at that time? Do you have copies of correspondence with your Congressman, the Red Cross, Department of Army—any correspondence in connection with the delay or change of orders?

Major PERESS. I should say——

The CHAIRMAN. Do you or do you not have the correspondence?

Major PERESS. Well, I made copies but I am not real sure I have them.

The CHAIRMAN. You don't have any along with you?

Major PERESS. Let's see.

(Witness examines record.)

The CHAIRMAN. Any documents having to do with the change of orders?

Major PERESS. I do not have them with me.

The CHAIRMAN. Did anyone in the Army ever ask you whether you were a member of the Communist Party or a Communist Party organizer?

Major PERESS. I decline to answer that question under the protection of the fifth amendment on the ground it might tend to incriminate me.

The CHAIRMAN. You decline to answer whether or not they asked you? Are you a member of the Communist Party today?

Major PERESS. I again decline, claiming the privilege for the reason previously stated.

The CHAIRMAN. Were you a member of the Communist Party at the time you were inducted?

Major PERESS. I again claim the privilege.

The CHAIRMAN. Did any Communists intervene to have your orders changed so you would not have to leave the country?

Major PERESS. I again claim the privilege.

The CHAIRMAN. You are entitled to the privilege.

Is your wife a member of the Communist party?

Major PERESS. I again claim the privilege.

Mr. COHN. Your wife's name is Elaine, is that correct?

Major PERESS. Yes, sir.

The CHAIRMAN. How many children do you have?

Major PERESS. Two.

The CHAIRMAN. How old are they?

Major PERESS. Six and a half and eight and a half.

The CHAIRMAN. And you said your orders were changed because of illness. What was the illness?

Major PERESS. It is a personal matter I'd rather not discuss. The Army has official information on it.

The CHAIRMAN. If it is an illness which is in any way embarrassing, we would not require you to discuss it. Otherwise, we will have to ask you about it.

I am curious to know how Communists can get their orders changed so easily. The average man would be sent to Yokohama. You can suddenly have your orders changed and kept in this country. I am

curious to know whether the illness was real or imaginary. I am curious to know if that was the real factor; if you were telling the truth, or you were lying. You told the Army your wife and daughter were sick. If the sickness would be embarrassing to discuss it, we will not ask about it; otherwise I want to know about it.

Major PERESS. The Red Cross made an investigation of the nature of the illness and the validity of the reason of the change and these are on file in the Army records.

The CHAIRMAN. What were the reasons? If the Red Cross made an investigation, there is nothing confidential. What were the reasons?

Major PERESS. I would still rather not discuss it, Senator, because it is personal, and I feel it invades the privacy of the medical profession and is not pertinent.

The CHAIRMAN. Mister, I don't know whether the reason is sufficient. Every day in my office I have young men writing in saying their wives are sick, very ill, asking to have their orders changed so they will not have to go overseas. They are sent overseas. I just wonder how you Communists have such tremendous luck day after day when you come before us. There is no consideration too great. I want to find out how you stopped at the port of embarkation; who stopped you when he knew you were a Communist; whether another Communist did it for you, and I am going to order you to tell us what the alleged illness was.

Major PERESS. The reason is simply that my wife and daughter were undergoing psychiatric treatment, and I am not a psychiatrist and couldn't detail the reasons. He felt it would be desirable for the health of the family to have me stay.

The CHAIRMAN. In other words, there was no physical illness except that they were under the care of a psychiatrist because of some emotional disturbance. Is that correct?

Major PERESS. I don't know if you feel there is a difference between physical and mental illness—if there is a different level of the validity of illnesses. As I said, they were under psychiatric treatment.

The CHAIRMAN. How old was your daughter when she was under this treatment?

Major PERESS. She was at the time just under 6.

Mr. COHN. Now, Major, you are a graduate of the leadership training course of the Inwood Victory Club of the Communist Party, are you not?

Major PERESS. I decline to answer that question under the fifth amendment.

Mr. COHN. Did you attend courses in leadership of the Inwood Victory Club of the Communist Party at 139 Dyckman Street?

Major PERESS. I claim the privilege.

The CHAIRMAN. Let me ask you this. When you say you claim the privilege, you are claiming it under that part of the fifth amendment which provides that you need not give testimony that you feel might tend to incriminate you. Is that correct?

Major PERESS. That is correct.

The CHAIRMAN. You understand that you can only claim that privilege if you feel a truthful answer might tend to incriminate you; you cannot claim the privilege if you feel perjury would incriminate you. Do you understand?

Major PERESS. I understand your question.

The CHAIRMAN. Is your position that you feel a truthful answer to this question might tend to incriminate you?

Major PERESS. That is correct. Since the Constitution, I believe, states I may believe my answer may tend to incriminate and not that it will incriminate me, I am exercising the right under the fifth amendment, which so stated.

The CHAIRMAN. I asked you a simple question, before I can determine whether you are entitled to the fifth amendment privilege. The question is: Do you feel a truthful answer might tend to incriminate you? If you do, you are entitled to refuse. If you do not, then you must answer.

Major PERESS. Yes, I do feel a a truthful answer might tend to incriminate me.

The CHAIRMAN. And that is what you mean is your answer to all these questions when you say——

Major PERESS. That is correct.

Mr. COHN. At the leadership training course of the Inwood Victory Club, were you taught the doctrine of forcible overthrow of the United States Government?

Major PERESS. I again claim the privilege.

Mr. COHN. Did you yourself deliver talks at Communist discussion groups at which you discussed the doctrine of Marxism and Leninism urging the overthrow of the Government of the United States by force and violence?

Major PERESS. I again claim the privilege.

Mr. COHN. When you went down to Camp Kilmer, specifically, when at Camp Kilmer, did you attempt to recruit any of the military personnel there into the Communist Party?

Major PERESS. I again claim the privilege for the same reason.

Mr. COHN. While stationed at Camp Kilmer did you have Communist Party meetings at your home, attended by one or more military personnel from Camp Kilmer?

Major PERESS. I again claim the privilege.

Mr. COHN. Now, you attended City College from 1933 to 1936. Is that right?

Major PERESS. Yes, sir.

Mr. COHN. And then you went to NYU Dental School from 1936 through 1940?

Major PERESS. That is right.

Mr. COHN. While you were at Camp Kilmer, were you taking orders from any functionaries of the Communist Party?

Major PERESS. I again claim the privilege.

Mr. COHN. In addition to your work in the Dental Corps, did you have any other assignment, extra duty, or anything else in connection with Army service? Were you ever on any board or special detail?

Major PERESS. Repeat the beginning of that question.

Mr. COHN. In addition to your regular dental duty, did you ever carry out any other assignment, extra duty, or anything else in connection with Army service on a part-time basis?

Major PERESS. I carried no assignment, but in the preliminary training at Fort Sam Houston it was not all dental work. I had to learn how to conduct medical battalions in the field and take over first-aid duties.

Mr. COHN. Did you ever sit on a board?

Major PERESS. I took regular duty when my turn came around, that is, dental duty.

Mr. COHN. You had no duty other than dental duty?

Major PERESS. That is right.

Mr. COHN. While at Camp Kilmer, did you, in fact, recruit military personnel into the Communist Party?

Major PERESS. I again claim the privilege.

The CHAIRMAN. Were you promoted after the Army had you in and questioned you about your background?

Major PERESS. You mean in service?

The CHAIRMAN. I mean were you before the security officer, a board, or your commanding officer and questioned about your background?

Major PERESS. I was never before any board in the Army for questioning.

The CHAIRMAN. You say you were never before a board of inquiry or questioned about your background by any officer of the Army?

Major PERESS. If this is what you mean, I was never before any board of inquiry of one or more members.

Mr. COHN. In August of 1953, that is August of this last summer, were you asked any questions or given interrogatories concerning Communist Party affiliations?

Major PERESS. Would you repeat whether you are asking about orally or in writing?

Mr. COHN. We will let it cover both. My question was, Were you asked written or oral questions concerning Communist Party affiliations?

Major PERESS. Was I asked these questions?

Mr. COHN. In August of 1953 you were given interrogatories by the Army which you refused to answer. Isn't that a fact?

Major PERESS. I answered them.

Mr. COHN. You answered all of them?

Major PERESS. Yes.

Mr. COHN. Did you ever refuse to answer interrogatories put to you by the Army?

Major PERESS. What is the meaning of refuse? I was given an interrogatory and I returned it.

Mr. COHN. Did you answer every question on the interrogatory?

Major PERESS. Yes; or it would not have been accepted.

Mr. COHN. I am talking about August 1953.

Major PERESS. It would not have been accepted if I had not answered all the questions.

Mr. COHN. Did you give information in response to every question? (Witness consults with counsel.)

Mr. COHN. You were given an interrogatory by the Army in August 1953. You declined to answer certain of the questions on the basis of the fifth amendment. That is a matter of public record, isn't it?

Major PERESS. That is right.

Mr. COHN. How many questions did you decline to answer on the basis of the fifth amendment?

Major PERESS. (No answer.)

Mr. COHN. Is this a fair statement? Let me see if I can save time. You refused to answer, under the fifth amendment, any questions dealing with Communist affiliations or associations.

Major PERESS. If I may see the interrogatory, I can answer that question.

The CHAIRMAN. Answer the question.

Major PERESS. Well, do you have a record on it?

The CHAIRMAN. Answer the question.

Major PERESS. I claim the privilege.

The CHAIRMAN. You are ordered to answer.

Major PERESS. I have no privilege on this question?

The CHAIRMAN. You are ordered to answer the question. You can consult with counsel if you like. The question is, On this application, did you refuse to answer questions relating to Communist Party affiliations?

Major PERESS. If you will repeat the specific questions on the interrogatory to me—

The CHAIRMAN. You are ordered to answer counsel's question.

Major PERESS. I claim the privilege on the questions that were presented to me on the interrogatory.

The CHAIRMAN. Have the record show that the witness was ordered to answer counsel's question. In view of the fact that it is a matter of public record, there is no privilege. After the chairman ordered him to answer, the witness persisted in refusing to answer.

Mr. FAULKNER. He did answer the question, Mr. Senator.

Major PERESS. I answered the questions on the interrogatory they refer to by claiming the fifth amendment.

The CHAIRMAN. With reference to those questions on the interrogatory, you answered them to the Army by claiming the fifth amendment?

Major PERESS. That is right.

The CHAIRMAN. In what connection was the interrogatory filled out? Was it in connection with a loyalty investigation or a promotional investigation?

Major PERESS. There was no discussion by the colonel who gave them to me.

Mr. COHN. Who was that?

Major PERESS. He was in the G-2 office. I don't recall his name. It was a short name, Smith or something like that. It might have been Smith.

Mr. COHN. Did you hear anything further from this colonel after you filled out the interrogatory?

Major PERESS. They gave them to me 1 day and I filled them out and gave them back the next day.

The CHAIRMAN. You heard nothing from him after that—after you refused to answer?

Major PERESS. After I resubmitted the interrogatory with the questions answered in writing, I never heard from him again.

The CHAIRMAN. After you refused to answer questions concerning Communist Party affiliations, claiming the fifth amendment, in this questionnaire, you heard nothing more about the matter from any Army officials and you were subsequently promoted; is that correct?

Major PERESS. That is correct.

The CHAIRMAN. Did any Communists aid you in getting this promotion?

Major PERESS. I again claim the privilege, but I will tell you how the promotion was effected if you want to know.

The CHAIRMAN. Do you know any Communist in the military today?

Major PERESS. I again claim the privilege.

The CHAIRMAN. How much of your salary, if any, do you contribute to the Communist Party?

Major PERESS. I again claim the privilege for the same reason.

The CHAIRMAN. Did you attend a Communist Party meeting within the last week?

Major PERESS. I again claim the privilege.

The CHAIRMAN. Have you attempted to recruit soldiers into the Communist Party in the last week?

Major PERESS. I again claim the privilege.

The CHAIRMAN. Is there a Communist cell at Camp Kilmer of which you are a member?

Major PERESS. I again claim the privilege.

The CHAIRMAN. Did you not organize a Communist cell at Camp Kilmer?

Major PERESS. I again claim the privilege.

The CHAIRMAN. Do you think Communists should be commissioned in our military?

Major PERESS. I again claim the privilege.

The CHAIRMAN. You are not entitled to any privilege on that question. You are ordered to answer.

Major PERESS. Do I think Communists should be commissioned in the Army, I haven't thought about it. I don't feel one way or the other.

The CHAIRMAN. Do you think if the Army finds out you are an organizer for the Communist Party, organizing a cell, soliciting soldiers in the party, they should oust you from the Army or leave you in or do you have any opinion on that?

Major PERESS. I feel I haven't any opinion; that that is a policy for the Army to say.

Mr. COHN. I meant to ask this. Is the psychiatric treatment of your wife and daughter continuing up to the present time?

Major PERESS. Yes.

Mr. COHN. Continuing steadily without interruption?

Major PERESS. Yes, sir.

Mr. COHN. What is the name of the doctor who gives that psychiatric treatment? Do you recall that?

Major PERESS. I am not sure. I know it is connected with NYU. There is a clinic at NYU. I don't know if it is affiliated with NYU.

The CHAIRMAN. You don't know the name of the doctor who has been treating your wife a year or two.

Major PERESS. There has been more than one physician involved.

The CHAIRMAN. What was the name of the first one you knew?

Major PERESS. I am not sure.

The CHAIRMAN. You are not sure. You are not sure of the name of any doctor or psychiatrist who treated your wife for an ailment so serious?

Major PERESS. Dr. Schecter was involved. I think he is treating my daughter, and Dr. Gerwin, who, I think, is treating my wife, or the other way around. One is treating my wife and the other my daughter.

The CHAIRMAN. Now, when was the last treatment for either your wife or daughter?

Major PERESS. Tuesday and Friday they go.

The CHAIRMAN. And what doctor was treating your wife and daughter at the time you received this change of orders?

Major PERESS. It is a German name. I don't recall.

The CHAIRMAN. Where is his office?

Major PERESS. It is in the midwest Manhattan section, and I believe in the eighties.

The CHAIRMAN. How long before the application for change of orders was your wife and daughter being treated for this psychiatric ailment?

Major PERESS. I couldn't say for sure. My wife, I believe, had been seeing this doctor for a year or 2 years.

The CHAIRMAN. How long had your daughter been taking treatments?

Major PERESS. It may have been at the age of 4 or 3½ or 4½.

The CHAIRMAN. You say you refuse to tell us whether or not a Communist helped to get this change of orders?

Major PERESS. Under the privilege.

The CHAIRMAN. You will be ordered to appear in Washington, in room 357, Senate Office Building, on the 16th of February.

(The chief counsel consults with the chairman.)

We will change that place and date to the 18th of February in New York City, in this courthouse. Now, I don't know what room here it will be. Counsel will notify your lawyer what room, and make that 10:30 in the morning, unless your counsel is notified of a different time.

Mr. FAULKNER. Will that be executive session?

The CHAIRMAN. That will be public session.

Mr. FAULKNER. I think the record should show the witness appeared here voluntarily without subpoena. Will he be subpoenaed?

The CHAIRMAN. He is ordered now.

Mr. COHN. You understand if a man is notified to appear before a congressional committee and given sufficient time, regardless of whether he is notified by telephone, telegram, or formal subpoena, that is a subpoena. Now, if you prefer—sometimes counsel prefers subpoena.

Mr. FAULKNER. That is what I am coming to. The witness, being in the Armed Forces, I think a subpoena—

Mr. COHN. We will be glad to do that.

The CHAIRMAN. Now, Counsel, the committee would like to look at the correspondence of the witness relating to military service and various assignments he had. I assume he has that with him.

Mr. COHN. We just want to look at it. We will return it. We will have a copy made if we need it.

Mr. FAULKNER. This has been turned over to me as counsel, and as his counsel I am not prepared to turn it over. It is confidential.

Mr. COHN. He can't make it a confidential privilege merely because he turns it over to you. If it is under his control and in his possession, he has to produce it. This is clearly under his control.

Mr. FAULKNER. On the other hand, I don't see why he should have any objection to that. Everything we have here you have a copy of in the files. These are just copies of letters going back to 1940, if you are interested in 1940.

Mr. COHN. All we will do is have an investigator look through it. Why don't you stay there with them to see that nothing is removed. If anything is of sufficient importance, arrangements will be made with you to have it photostated, so you will be sure to have it back.

Major PERESS. These forms I filled out when I entered service, that I believe is confidential between me and the Army.

The CHAIRMAN. There is nothing confidential between a member of the Communist Party and the Army when the committee is investigating.

Major PERESS. I just made copies of them.

The CHAIRMAN. Anything in the hands of the Communist Party is no longer confidential, because being in the Communist Party, if they tell you to turn things over to the Communist Party, you know you are bound to do it, so we don't give the Communist Party any special privilege before this committee. The witness is ordered to turn the papers over to counsel.

In case any questions arise, have the record show that the major has the material in his hands and will turn it over to his lawyer and he will produce it.

You haven't been asked to resign, have you?

Major PERESS. Yes, I have.

The CHAIRMAN. Who asked you?

Major PERESS. Colonel Moore. I am not sure of that name. It might be some other name.

The CHAIRMAN. Did you refuse to resign?

Major PERESS. No, I accepted the request. I have a day of termination.

The CHAIRMAN. What date are you due to resign?

Major PERESS. It is no later than the 31st of March, but I can move it up if I so desire.

The CHAIRMAN. You are being given an honorable discharge?

Major PERESS. I haven't been given—

The CHAIRMAN. So far as you know, you are being allowed to resign with no reflection on your record?

Major PERESS. There was no discussion of that.

The CHAIRMAN. Why were you asked to resign?

Major PERESS. They wouldn't tell me the reason.

The CHAIRMAN. Did you ever refuse to resign?

Major PERESS. No, I was never requested to before.

The CHAIRMAN. When were you requested to resign?

Major PERESS. A week ago today.

The CHAIRMAN. In other words, you were asked to resign after you were ordered to appear before this committee?

Major PERESS. I was ordered to come before this committee yesterday morning.

Mr. COHN. That was the first time you had ever been asked to resign?

Major PERESS. The first time was a week ago this morning at 11 o'clock.

The CHAIRMAN. O. K., you may step down.

(Whereupon, the hearing adjourned at 11:30 a. m.)

AFTERNOON SESSION

The CHAIRMAN. Will you raise your right hand? In this matter now in hearing before this committee, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PERESS. I do.

**TESTIMONY OF IRVING PERESS (ACCOMPANIED BY HIS COUNSEL,
STANLEY FAULKNER, NEW YORK CITY)**

The CHAIRMAN. You said you were not a major. When did you last have the rank of major?

Mr. PERESS. I would like, if possible, to make a statement before testifying before the committee. I have a brief statement I would like to make. I will answer the question. I stopped being a major February 2, 1954.

The CHAIRMAN. February 2, 1954?

Mr. PERESS. May I read a statement before the committee?

The CHAIRMAN. If you have a statement your attorney is aware of the rules of the committee. The statement must be submitted 24 hours in advance. In other words, if you will hand the statement up, we will glance at it and see whether you can read it. If it is pertinent to the hearing, you will be allowed to read it.

(Document handed to chairman.)

The CHAIRMAN. You may read it. Is this an extra copy?

Mr. PERESS. Yes.

I have been subpoenaed to appear before this committee presumably to answer certain questions concerning my political beliefs, both past and present. So that there may be no mistake about my position in this regard, I shall decline to answer any such questions under the protection of the fifth amendment to our Constitution.

The CHAIRMAN. May I interrupt you there? You are not being subpoenaed to answer in regard to your political beliefs. You are here to answer in regard to the part you played while an officer in the United States Army in the conspiracy designed to destroy this Nation. That is what you are being called about. You are not being asked about any of your political beliefs. You will not be asked about any political beliefs.

You may proceed.

Mr. PERESS. From my earliest schooling I have been taught that the United States Constitution is the highest law of our land and that one of the strongest provisions is the protection afforded to all persons of the privilege under the fifth amendment. My education has also taught me that anyone, even a United States Senator, who would deny this constitutional protection to any individual or who under his cloak of his immunity would draw inferences therefrom, and publicly announce such inferences, is subversive. I use that word advisedly. By subversive I mean anyone who would undermine the strength of the Constitution and thereby weaken our democratic form of government. When I appeared before you, Senator McCarthy, on January 30, 1954, at an executive session of your committee, you, acting as a committee of one, made certain charges concerning my promotion in rank and pending honorable discharge. Just to make the record clear, I was promoted and honorably discharged under Public Law 84 of the 83d

Congress, which incidentally was passed when you, Senator McCarthy, were a Member of the Senate. In recognition of my honest and faithful service to my country I was awarded an honorable discharge on February 2, 1954. In the period of my service, no one either within or without found it necessary to question my loyalty.

Another bit of schooling which I had as a Jew was a study of the Old Testament, which I highly recommend to you, Senator, and your counsel, and particularly Book 7 of the Psalms, which reads:

His mischief shall return upon his own head and his violence shall come down upon his own pate.

The CHAIRMAN. Major, you just heard a policewoman for the city of New York testify that you attended a Communist leadership school. Is that testimony on her part true or false?

Mr. PERESS. I must decline to answer that question, Senator, under the protection of the fifth amendment on the ground that it might tend to incriminate me. I would also like to say, Senator, that I am not a major. The title is "Dr. Peress," not "Major Peress."

The CHAIRMAN. Let me make this very clear: You have been accused, Major, of the most dishonest, the worst conduct that anyone in the Army can be guilty of. You have been accused under oath of being a member of a conspiracy designed to destroy this Nation by force and violence. You are here this morning, you are given an opportunity under oath, to tell us whether or not those charges are true or false. If you are a part of this treasonous conspiracy, if you have attended leadership schools of the Communist conspiracy, obviously you will take the protection of the fifth amendment. If you are innocent, you will tell us that. Now, let me ask you this question: Is it true that as of this moment and during all the time that you were an officer in the United States Army, you were an active member of the Communist conspiracy?

(The witness conferred with his counsel.)

The CHAIRMAN. At the time you received your commission in the Army, were you a section organizer for the Communist conspiracy?

(The witness conferred with his counsel.)

Mr. PERESS. I claim the privilege.

The CHAIRMAN. What privilege?

Mr. PERESS. The privilege to decline to answer under the fifth amendment.

The CHAIRMAN. On the ground of self-incrimination?

Mr. PERESS. On the ground that it might tend to incriminate me.

The CHAIRMAN. At the time you were promoted from captain to major, were you then an active, knowing member of the Communist conspiracy?

Mr. PERESS. I claim the privilege.

The CHAIRMAN. You will have to tell us each time under what privilege.

Mr. PERESS. I must decline to answer that question under the protection of the fifth amendment on the ground that it might tend to incriminate me.

The CHAIRMAN. All right.

Did you hold Communist meetings in your home while you were an officer in the United States Army?

Mr. PERESS. I claim the first amendment on the ground that it might tend to incriminate me.

The CHAIRMAN. Who signed your honorable discharge?

Mr. PERESS. John J. McManus, major, Infantry.

The CHAIRMAN. Is that your discharge?

Mr. PERESS. That is a photostat of it.

The CHAIRMAN. Will you hand it up?

(Document handed to the chairman.)

The CHAIRMAN. Where is John J. McManus located?

Mr. PERESS. I have no idea.

The CHAIRMAN. Who notified you that you would receive an honorable discharge?

Mr. PERESS. I don't believe I was officially notified. It was just tendered to me when I left.

The CHAIRMAN. It was handed to you?

Mr. PERESS. Yes; as part of my records.

The CHAIRMAN. Let's have the record show that this is signed February 2, 1954. This was handed to you on what date?

Mr. PERESS. February 2, 1954.

The CHAIRMAN. Let us have the record show that this was signed and handed to this fifth amendment Communist, Major Peress, after I had written the Secretary of the Army suggesting that he be court-martialed, suggesting that everyone having anything to do with his promotion, with his change of orders, be court-martialed. I did that feeling that this would be one way to notify all the officers in the Army and all the enlisted men, that there has been a new day in the Army, that the 20 years of treason have ended, and that no officer in the Army can protect traitors, can protect Communists. I want the record to show this was given to you after that letter had been made public, before the Secretary of the Army, Robert Stevens, returned to the United States. I ask, Mr. Adams, where is John J. McManus now?

Mr. JOHN ADAMS (legal counsel to Department of the Army, Washington, D. C.). I don't know, Mr. Chairman. I presume he is an officer in headquarters, First Army.

The CHAIRMAN. Will we have to subpoena him, or will he be produced?

Mr. ADAMS. He will be produced.

The CHAIRMAN. Good. We will want him in executive session this afternoon, unless he feels that he needs additional time to get a lawyer to represent him. If he wants additional time, we will give him any time that is within reason that he wants. If he doesn't need time to get a lawyer, I want him here this afternoon at 2:30 o'clock, in executive session.

Have you met John J. McManus?

Mr. PERESS. Not to my knowledge.

The CHAIRMAN. Who handed you this honorable discharge?

Mr. PERESS. I am not sure. I think it was a sergeant at the separation center. I don't know—or it could have been a warrant officer.

The CHAIRMAN. Who is the highest ranking officer with whom you spoke after your appearance before the committee?

Mr. PERESS. General Zwicker.

The CHAIRMAN. General Zwicker? What conversation did you have with General Zwicker?

(The witness conferred with his counsel.)

Mr. PERESS. Would you repeat that question, please?

The CHAIRMAN. Will the reporter read the question?

(The reporter read from his notes as requested.)

Mr. PERESS. I don't recall the exact word-for-word conversation. I requested of General Zwicker, after the hearing before you on January 30, when I saw him on February 1, that an inquiry be made into these charges, that the newspapers had lambasted me with on Sunday and Monday.

The CHAIRMAN. Did you tell him whether or not you were a Communist?

(The witness conferred with his counsel.)

Mr. PERESS. I decline to answer that question on the grounds—

The CHAIRMAN. You wanted an inquiry made as to whether or not you are a Communist; is that correct?

(The witness conferred with his counsel.)

Mr. PERESS. I wanted an inquiry of my conduct at Camp Kilmer.

The CHAIRMAN. Did you want the inquiry to include the question of whether or not you had been holding Communist meetings at your home, whether you had attended a Communist leadership school, whether you had been recruiting military personnel there into the Communist conspiracy? Did you want that included?

(The witness conferred with his counsel.)

Mr. PERESS. I could not tell them what to inquire about, but I asked for an inquiry of the charges generally. I didn't specify as to which charges to inquire into and which not to inquire into.

The CHAIRMAN. Did you tell them whether or not you would tell them the truth if they made such an inquiry?

Mr. PERESS. I told General Zwicker, as you asked me, that I would like an inquiry into the charges. I didn't tell him anything further.

The CHAIRMAN. They made an inquiry in August, did they not? They sent you a questionnaire. They came to the best witness they could find on this, assuming a Communist is a good witness. They asked you practically all the questions this committee has asked you. They asked you about all of your alleged activities in this Communist conspiracy. That was in the inquiry. Did you tell them the truth at that time?

(The witness conferred with his counsel.)

Mr. PERESS. I decline to answer that question on the grounds that it might tend to incriminate me.

The CHAIRMAN. Did you answer the questions as to whether or not you were a member of the Communist conspiracy at that time?

Mr. PERESS. I decline to answer.

The CHAIRMAN. You will be ordered to answer. It is a matter of public record. You cannot decline.

(The witness conferred with his counsel.)

Mr. PERESS. If it is a matter of public record, then I decline to answer.

The CHAIRMAN. You decline to answer? You decline to answer that?

Mr. PERESS. You said it is a matter of public record.

The CHAIRMAN. Are you declining to answer?

(The witness conferred with his counsel.)

Mr. PERESS. Could you repeat the question, please?

The CHAIRMAN. The reporter will read it.

(The reporter read from his notes as requested.)

Mr. PERESS. I decline to answer that question.

The CHAIRMAN. Have the record show, so that there can be no claim of lack of knowledge at a future legal proceeding——

Mr. PERESS. On the fifth amendment.

The CHAIRMAN. That the witness was asked whether or not he answered an Army questionnaire, as to whether or not he was part of the Communist conspiracy. He declined, invoking the fifth amendment. The Chair ordered him to answer on the grounds that this is an improper invocation of the fifth amendment. Have the record show he still declines.

(The witness conferred with his counsel.)

Mr. COHN. Mr. Chairman, in executive session this witness, after you overruled his privilege, did answer this question and stated, "I answered the questions on the interrogatory by claiming the fifth amendment."

In other words, when the Army submitted interrogatories to this witness in August he refused to answer to the Army the pertinent questions on Communist activity, and claimed the fifth amendment in the Army inquiry at that time.

The CHAIRMAN. Thank you, Counsel, for calling that to my attention. Have the record show that an additional ground for the Chair's ordering him to answer is the fact that he has already waived the fifth amendment privilege as to this area of investigation. Have the record show that he still refuses to answer.

In November 1953, were you promoted to major?

Mr. PERESS. Was I promoted to major in November of 1953?

The CHAIRMAN. Yes.

Mr. PERESS. Yes.

The CHAIRMAN. Did anyone in the military, between August 1953 and January of 1954, ever ask you about any alleged Communist Party activities on your part?

(The witness conferred with his counsel.)

Mr. PERESS. Would you read that again, please?

(The reporter read from his notes as requested.)

Mr. PERESS. I decline to answer that.

The CHAIRMAN. You are ordered to answer.

Mr. PERESS. I decline on the grounds of the fifth amendment, that the answer might tend to incriminate me.

The CHAIRMAN. After our hearing here in New York, I believe it was about 2 weeks ago, I read a statement which you allegedly made to the press, to the effect that the charges that you were a Communist were false. Now, I know that you fifth amendment Communists sing a different tune under oath. You can lie as much as you like when you are not under oath. Do you want to tell us now whether or not that statement to the press was a lie, or whether you were telling the truth when you told the press you were not a Communist?

(The witness conferred with his counsel.)

Mr. PERESS. I decline to answer that question on the grounds of the fifth amendment, that the answer might tend to incriminate me.

The CHAIRMAN. You are entitled to the privilege. When you attended Communist leadership school, were you, among other things, taught the necessity of the destruction of our Constitution, including the fifth amendment upon which you rely today?

Mr. PERESS. I decline to answer that question under the protection of the fifth amendment to the Constitution on the ground that the answer might tend to incriminate me.

The CHAIRMAN. Is it a fact, Mister, that you have attended Communist schools, leadership schools, you spoke there, your wife spoke there, you advocated the destruction of the Constitution, you advocated the destruction of the very amendment behind which you so cowardly hide today? Is that not a fact?

Mr. PERESS. I decline to answer that question on the grounds that the answer might tend to incriminate me.

The CHAIRMAN. You are entitled to decline.

I may say that if you were an officer in the Russian Army instead of the United States Army, if you were charged with treason against Communist Russia, you would not have any fifth amendment there, Mister. And your life insurance would be rather high.

(The witness conferred with his counsel.)

The CHAIRMAN. Mr. Cohn?

Mr. COHN. Mr. Peress, were you, when commissioned in January of 1953, section organizer for the Communist Party in Queens County?

Mr. PERESS. I must decline to answer that question under the protection of the fifth amendment on the ground that it might tend to incriminate me.

The CHAIRMAN. While you were in the Army, did you contribute a percentage of your pay to the Communist Party?

Mr. PERESS. I decline again on the same privilege.

Mr. COHN. Did you attempt to recruit any military personnel into the Communist Party?

Mr. PERESS. I decline to answer; the same privilege.

The CHAIRMAN. Will you speak a little louder, sir?

Mr. PERESS. I decline to answer the question under the protection of the fifth amendment on the grounds that it might tend to incriminate me. Shall I go through that whole sentence every time, Senator?

The CHAIRMAN. If that is what you are relying upon, you will state the grounds for your refusal.

Mr. COHN. Did you ask officers stationed with you to attend Communist Party meetings with you?

Mr. PERESS. I must decline to answer that question under the fifth amendment.

Mr. COHN. Did you make a contribution, through the Daily Worker, to the defense fund for the indicted Communist leaders?

Mr. PERESS. I decline to answer under the fifth amendment.

Mr. COHN. I will hand you a copy of page 12 of the Daily Worker for November 22, 1949, and direct your attention to an article entitled "Dollars Keep Coming for Defense Fund." It concludes with a statement from the Daily Worker—"To all of you wonderful people, thanks, thanks a million." There is a short list of names, and on that list of names is the name Irv Peress, Queens. I would like for you to examine that and tell the committee whether or not you are the Irv Peress of Queens who received this commendation from the Daily Worker for a contribution to the Communist defense fund.

The CHAIRMAN. While he is examining that, may I have the record show that Senator Potter is represented here by his very able assistant, Robert Jones. Senator Dirksen is represented by his equally able assistant, Mr. Rainville. I want Mr. Rainville and Mr. Jones to know

that as the representatives of the two Senators, you have the same right to ask questions which any Senator would have.

Mr. COHN. Are you the Irving Peress who received the thanks of the Daily Worker for this contribution to the Communist defense fund?

Mr. PERESS. I decline to answer on the grounds that it might tend to incriminate me.

The CHAIRMAN. Will you speak a little louder?

Mr. PERESS. I decline to answer.

Mr. COHN. Of course, Mr. Chairman—

Mr. FAULKNER. Did you read into the record that this is dated—

The CHAIRMAN. We will not hear from counsel. If you want anything read into the record, Mr. Peress can read it in. We will not hear from counsel. I may say, Mr. Counsel, that this rule was not made for you. It was made by the committee and made unanimously. We give the witness the right, which he would not have in a court, a right to confer with counsel, at any time he cares to. Counsel can coach him in his answers, which is a right he would not have in court. We do not allow counsel to take part in the proceedings. The reason for that is obvious. And I am not speaking about you, Mr. Counsel, but I speak about the general situation. If we allowed Communist lawyers to take part in a filibuster proceedings, we could never hold an intelligible hearing. So if there is anything you want to say, you will have to abide by the same rule, which is not directed against you personally, but you will have to talk through your client.

Mr. FAULKNER. May I say something on that, what you just referred to, Senator?

The CHAIRMAN. No, I said we will not hear from counsel.

Mr. FAULKNER. Not on this point. That is all.

The CHAIRMAN. I will not hear from counsel on any point. I did not make the rule. We have 4 Republicans, 3 Democrats. We unanimously passed that rule. I must abide by that rule the same as you must. If you have something to say, you can tell your client and he will say it.

(The witness conferred with his counsel.)

Mr. COHN. Mr. Chairman, as I indicated when this article was first referred to, I read the date into the record, which was November 22, 1949, and I ask that this entire article and the page from the Daily Worker be received into evidence. I might state that an examination of the article indicates that Irv Peress, of Queens, had sent in a dollar contribution to the defense fund for the Communist leaders to accompany an entry which he had made into a contest being run by the Daily Worker at that period of time. All of that is set forth on this page. I ask that that be received into evidence.

The CHAIRMAN. It will be received.

(The document referred to was marked "Exhibit No. 6" and may be found in the files of the subcommittee.)

Mr. COHN. I would call to your attention, Mr. Chairman, the fact that this was obtained by the committee from a public record which, of course, would have been available to the Army well before this man was handed a commission. It was listed in the public files.

Now, referring to public files, Mr. Peress, did you take an ad in the 15th anniversary edition of the Journal of the Abraham Lincoln Brigade, which journal was sponsored by the Communist Party and

sent greetings to comrades on the celebration of the 15th anniversary of the Abraham Lincoln Brigade?

Mr. PERESS. I decline to answer under the fifth amendment.

Mr. COHN. Did you take an ad in the 10th anniversary, appearing on the back page of the 10th anniversary edition of the Journal of the Abraham Lincoln Brigade?

Mr. PERESS. I decline to answer under the fifth amendment.

Mr. COHN. Have you been a subscriber to the Daily Worker for the last 14 years?

Mr. PERESS. I decline to answer on the grounds that it might tend to incriminate me.

Mr. COHN. While you were a captain and a major in the Army, up until this month, did you receive the Daily Worker?

Mr. PERESS. I decline to answer under the fifth amendment.

Mr. COHN. Did you take the Daily Worker with you to your Army assignment?

Mr. PERESS. I decline to answer under the fifth amendment.

Mr. COHN. Did you show the Daily Worker to officers stationed with you?

(The witness conferred with his counsel.)

Mr. PERESS. I decline to answer under the fifth amendment.

The CHAIRMAN. Mr. Jones?

Mr. JONES. Mr. Peress, when you became an officer of the Army of the United States, I assume that you took the regular oath of office?

(The witness conferred with his counsel.)

Mr. PERESS. Could I have the identification of who is questioning me?

The CHAIRMAN. Will you try and speak up, sir?

Mr. PERESS. Could you identify the gentleman who is making the inquiry?

The CHAIRMAN. Mr. Robert Jones, administrative assistant to Senator Potter.

(The witness conferred with his counsel.)

Mr. PERESS. Is he empowered by the Senate to question me?

The CHAIRMAN. Answer the question.

Mr. PERESS. The question is did I take the regular oath of office when I was commissioned, first commissioned?

Mr. JONES. Do you want to read the question back?

(The reporter read from his notes as requested.)

Mr. PERESS. Yes.

Mr. JONES. You did take the regular oath of office. In other words, you did take the oath?

Mr. PERESS. I don't know what you mean by the regular oath.

Mr. JONES. The regular oath to uphold and defend the Constitution, you took that oath, is that correct?

Mr. PERESS. That is right.

Mr. JONES. Did you ever refuse to take an oath?

(The witness conferred with his counsel.)

Mr. PERESS. An oath to uphold the Constitution?

Mr. JONES. Exactly. Did you ever refuse to take it?

Mr. PERESS. No.

The CHAIRMAN. May I have the record straight. Did you ever refuse to sign any oath or affidavit for the Army?

(The witness conferred with his counsel.)

Mr. PERESS. None that I can recall.

Mr. JONES. Now, Mr. Peress, when you took the oath to uphold and defend the Constitution, were you a member of the Communist Party at that time?

Mr. PERESS. I decline to answer that question on the fifth amendment, on the grounds that it might tend to incriminate me.

Mr. JONES. Would you while an officer of the Army of the United States having taken the oath to defend the Constitution, oppose any group that advocates the violent overthrow of the Government?

(The witness conferred with his counsel.)

Mr. PERESS. I would defend and uphold the Constitution of the United States, as taken in the oath.

Mr. JONES. That isn't answering the question. In other words, you took the oath to uphold and defend the Constitution of the United States. Having taken that oath, would you then oppose any group that advocates the overthrow of this Government?

(The witness conferred with his counsel.)

Mr. PERESS. I would oppose any group that would seek to overthrow the—

Mr. JONES. In other words, you would oppose the Communist Party?

Mr. PERESS. You are answering for me? I would oppose, as my oath states, any group that would seek to overthrow the United States Government by force and violence and unconstitutional means.

Mr. JONES. In other words, then, you would oppose the Communist Party?

Mr. PERESS. Is that a question or a statement?

Mr. JONES. I am asking you. Would you oppose the Communist Party?

Mr. PERESS. I decline to answer that question on the grounds that it might tend to incriminate me.

The CHAIRMAN. Mr. Peress, at the time you attended Communist leadership schools, were you not taught the necessity of the overthrow of this Government by force and violence?

Mr. PERESS. I decline to answer under the fifth amendment.

The CHAIRMAN. The witness will be ordered to answer the question on the grounds that he has waived the fifth amendment privilege by his answer to the previous question.

Mr. PERESS. I decline to answer on the grounds that it might tend to incriminate me.

The CHAIRMAN. Just so that counsel and the witness will be fully informed, the Chair takes the position that where you answer a question, you have waived the fifth amendment privilege as to that entire area of investigation. I have asked the Attorney General for an opinion upon that matter. If the Attorney General sustains the view of the committee, then we will heavily decimate the ranks of the Communist conspiracy by way of contempt actions, and convictions, against Communists like you, Major. If the Attorney General renders a favorable opinion, we intend to ask for a contempt citation against every Communist who comes here and, by answering certain questions, waives the fifth amendment, and then tries to invoke the fifth amendment in the same area of investigation.

I tell you that so that you cannot plead ignorance at some future legal proceeding.

I assume you still refuse to answer?

Mr. PERESS. I do.

The CHAIRMAN. Is that correct?

Mr. PERESS. I decline to answer under the fifth amendment.

The CHAIRMAN. I am going to hand you an exhibit—do you want to mark this?

Mr. COHN. Exhibit 7, Senator.

(The document referred to was marked "Exhibit No. 7," and may be found in the files of the subcommittee.)

The CHAIRMAN. I am going to hand you exhibit 7, and ask you if this is the oath you signed, either at the time you got your commission or about that time?

(Document handed to the witness.)

Mr. PERESS. I decline to identify this paper under the grounds that it might tend to incriminate me.

The CHAIRMAN. The witness will be ordered to identify it.

(The witness conferred with his counsel.)

Mr. PERESS. This is a blank paper, and I would have to decline to answer on the identification of it.

The CHAIRMAN. Is that the type of oath you signed?

Mr. PERESS. I couldn't recall. I would have to decline to answer. I would have to see the papers I signed.

The CHAIRMAN. You are declining because you cannot recall?

Mr. PERESS. No. I decline to answer on the grounds of the fifth amendment, that it might—

The CHAIRMAN. Would you read that oath? Read it out loud so I can hear it.

(The witness conferred with his counsel.)

Mr. PERESS. I decline to read the oath.

The CHAIRMAN. You will be ordered to read it to refresh your recollection so that you may be able to answer the question.

(The witness conferred with his counsel.)

Mr. PERESS. I decline to acknowledge that I have seen this statement before or signed such a paper, on the grounds that it might tend to incriminate me.

The CHAIRMAN. You will be ordered to read it.

Mr. PERESS. I decline to read it.

The CHAIRMAN. Hand that back to me, please.

(Document handed to the chairman.)

Mr. JONES. Mr. Peress, you have already stated that you took the oath to uphold the Constitution when you were commissioned a captain; is that correct?

(The witness conferred with his counsel.)

Mr. PERESS. To my recollection, on getting my commission as a captain I was sent a number of forms, and I signed them and sent them back. There was no official swearing-in ceremony.

Mr. JONES. You just said a few minutes ago that you took the oath to uphold the Constitution. That is in the official record.

(The witness conferred with his counsel.)

Mr. PERESS. If the oath was in there, I took the oath.

(The witness conferred with his counsel.)

Mr. JONES. Mr. Peress, will you please examine this statement?

The CHAIRMAN. Those will be made exhibits 8 and 9.

(The documents referred to were marked "Exhibits Nos. 8 and 9," and may be found in the files of the subcommittee.)

(Documents handed to the witness.)

(The witness conferred with his counsel.)

The CHAIRMAN. While the witness is examining that, may I ask a question of Mr. Adams, the legal counsel for the Army?

The information we have is that this man signed affidavits as to nonmembership in the Communist Party and subversive groups. Is it the position of the Army that by the honorable discharge which he received after he was before the committee, that he had been removed from the court-martial jurisdiction of the Army; or does the Army take the position they have jurisdiction to court-martial this fifth-amendment Communist for false swearing, of which he is obviously guilty?

Mr. JOHN ADAMS (legal counsel to the Department of the Army, Washington, D. C.). I am not quite sure that I know the question.

The CHAIRMAN. The question is—you are the legal counsel for the Army, and I assumed you discussed this. I know you are aware of the fact that I have been discussing it now since he got the honorable discharge. The question is, Has he been removed from the court-martial jurisdiction of the Army, or does the Army take the position that even though he received his honorable discharge, he can still be court-martialed for false swearing or any other crime of which he is guilty?

Mr. ADAMS. Mr. Chairman, a separation such as Major Peress received on February 2 is a final action. Under the Uniform Code of Military Justice, there is a section in the law which permits the Army to court-martial an individual for offenses which call for penalties in excess of 5 years, provided the offenses are known.

I submitted the questions raised by your letter to the Judge Advocate General of the Army, who has the responsibility, by statute, in the Army for military justice, and he gave me an opinion that probably a court-martial against the individual could not be sustained on the facts now before the Army.

The CHAIRMAN. In other words, on the grounds that this would not call for a penalty in excess of 5 years, he has been removed from the jurisdiction of the Army?

Mr. ADAMS. He has been removed from the jurisdiction of the Army, and the Army is not aware of any offenses which have been brought officially to its attention under which he could be tried.

The CHAIRMAN. You say the Army is not aware of any offenses, Mr. Adams?

Mr. ADAMS. That is correct, sir.

The CHAIRMAN. I do not pretend to cross-examine the legal counsel for the Army. You are here as a guest of the committee. But this matter disturbs me very greatly. I have heard that statement before. You have the evidence, the sworn testimony, that this man was part of the Communist conspiracy. You have that from a policewoman of the city of New York. It has been available to the Army for years, ever since she has been filing her reports. You have the information that he took a false oath when he swore that he was not a member of the Communist Party. You have his refusal to answer questions before a Senate committee. His refusal to answer questions by the Army would certainly constitute conduct unbecoming to an officer.

I do not think you want the record to stand, John, as saying that you were not aware of any offense. You said that was not brought

officially to your attention. May I say that you were here in an official capacity. Everything that this committee develops, including what we develop in an executive session, is your official knowledge.

As I say, I do not want to put you on the stand here and cross-examine you, but I am just curious about this fantastic procedure where we have this man before us, and we invited the legal counsel for the Army to sit in, listen to all of his testimony. He refused to answer, invoking the fifth amendment. I wrote to the Secretary of the Army and asked for his court martial. Before Secretary Stevens could get back to the United States, somebody in the Army—and I cannot conceive they were acting in good faith—gave him a hurry-up honorable discharge. My letter was made public on Monday, February 1; and Tuesday morning, February 2, this man—about whom you have so much testimony about organizing Communist cells, holding Communist meetings in his home, attending Communist leadership schools, his refusal to answer—was given an honorable discharge.

As you know, John, every Senator receives dozens of letters every month from young men who have good reasons for not wanting to serve. They want honorable discharges. If this is the pattern that is to be followed, if all you need to do is to join the conspiracy against this Nation to receive the stamp of honor from your country, get an honorable discharge, then the Communist Party perhaps should go out and recruit all the—well, although I do not think they would have much success, go out and try to recruit the young men who would like to get out of the Army.

I am going to ask you this, but I am not going to ask you to answer it now: I am going to ask that you give us the names of every officer, every member of the military personnel or any civilian who had anything to do with this man's promotion, knowing that he was a Communist; anything to do with his change of orders, knowing that he was a Communist; anything to do with his honorable discharge, knowing he was a Communist, knowing I have suggested a court martial for him.

I am curious to know whether or not that information will be forthcoming without a subpoena. If not, this is something which will not be allowed to drop. I want to assure everyone concerned, if it is humanly possible I intend to get to the bottom of it.

I think here you have the key to the deliberate Communist infiltration of our Armed Forces, the most dangerous thing. And the men responsible for the honorable discharge of a Communist are just as guilty as the man who belongs to the conspiracy himself.

So may I ask you, will the information be forthcoming without subpoena? If not, I intend to take this right to the very limit to get the names of all of those individuals, John. If you are not in a position to answer that today, I want to know when you can answer it.

MR. ADAMS. Mr. Chairman, the Secretary has given you a letter, which you received yesterday, which discussed the facts of this case as he now knows them. He is investigating to determine such additional facts as he can.

If there can be developed any indication of conspiracy of a subversive nature with reference to the handling of this or any other officer assignments, those matters will be prosecuted by the Army.

THE CHAIRMAN. John, I will not take any double-talk, any evasion on this. Either the Army is going to give me the names of the indi-

viduals responsible for coddling and honorably discharging a known Communist—not only a run-of-the-mill but an important member of the Communist conspiracy—or the Army is going to refuse.

I may say now, for the benefit of everyone concerned, if the Army refuses, I intend to take this to the floor of the Senate, and I intend to try to have cited for contempt any man in the military—and I do not care whether he is a civilian or an officer—who tries to cover up those responsible for this most shameful, most fantatistic situation.

If you cannot answer that today, I would like to know when I can get the answer. It is a simple decision. I want to know whether or not there is a new day in the Army or not. I have a lot of respect for Secretary Stevens, and I received a letter which I cannot conceive of Secretary Stevens having himself written. He may have.

Complete double-talk does not answer any of our questions. We are not going to take this, John, in this case. We are going to make an example here and see if we cannot set the pattern for a cleanout of those who have been invited into the military.

If the new Secretary wants to do that himself, very good. I think he will. But I will want to know within 24 hours whether or not the Army is going to give us the names of those whom I just indicated. We will ask for that information by tomorrow night.

If that period of time you think is unreasonable, we will give you additional time. I will be in Albany holding hearings tomorrow, and I will want to get that information there.

Mr. PERESS, just 1 or 2 more questions. While you were an officer in the Army, did you ever have access to any decoding or encoding machines?

(The witness conferred with his counsel.)

Mr. PERESS. No.

The CHAIRMAN. Were you ever O. D.? Were you ever officer of the day?

(The witness conferred with his counsel.)

Mr. PERESS. Yes.

The CHAIRMAN. How often did you serve as officer of the day?

Mr. PERESS. Dental O. D. That just covers the dental clinic for emergency treatment that may come up. There is no administrative responsibility. It is just to take care of emergency dental situations. I was O. D. in rotation. It came up depending on the number of dental officers. If we had 20 dental officers, it was every 3 weeks. When we were down lower, it would come around more frequently.

The CHAIRMAN. Your testimony is, then, that during all the time you were in the military, you never had access to any encoding or decoding machines?

Mr. PERESS. I don't even know what they are.

The CHAIRMAN. You say you don't know what they are?

Mr. PERESS. I have never seen such a machine.

The CHAIRMAN. Do you know what an encoding machine is?

Mr. PERESS. No.

The CHAIRMAN. You don't know what is meant by an encoding machine?

Mr. PERESS. No, I don't.

The CHAIRMAN. Do you know what is meant by a decoding machine?

Mr. PERESS. That I can figure out.

The CHAIRMAN. You can figure that out.

Did you ever see any messages, either before or after they were decoded, either while you were an officer of the day or otherwise? (The witness conferred with his counsel.)

Mr. PERESS. Unless you mean my orders to take a leave of absence or to take part of my annual leave. I don't know if that is a coded or decoded message. I thought it was mimeographed.

The CHAIRMAN. I think you know what I mean. I am just trying to get the facts.

Is it your testimony that, as far as you know, other than routine orders, change of station, leave orders, other than orders of that kind you never saw any material, either before or after it was decoded? I have special reference to the times when you served as O. D.

(The witness conferred with his counsel.)

Mr. PERESS. There is just a dental O. D. form, the name of the patient, serial number, and what you did for him. That is the only official printed material that you handle on O. D.

The CHAIRMAN. General Zwicker, may I ask you a question. You can stay right there.

Whenever I served as O. D.—and I think this has been general practice in the Marine Corps, the Navy, and the Army—you normally had access to the encoding and decoding machines. Ordinarily an officer of the rank of major or above must take his stint at encoding or decoding.

Could you tell me whether or not that has been the practice at Camp Kilmer?

Brig. Gen. RALPH ZWICKER (commanding officer, Camp Kilmer, N. J.). It is not.

The CHAIRMAN. In other words, so far as you know, this individual never had access to any confidential or secret material?

General ZWICKER. He did not.

The CHAIRMAN. Your answer is what?

General ZWICKER. He did not.

The CHAIRMAN. Just one other question, General. I did not intend to impose upon you this morning.

His Army file contains reference to his being considered for—and I think I am quoting it correctly—sensitive work in May of 1953. Would you have any idea what that sensitive work was? If you do not know, we will show you the file to refresh your recollection. The file shows that in May, that is, after it was fully known that he was a Communist, the file shows that he was considered for sensitive work.

The file does not show whether he was rejected or not. Just offhand, you wouldn't know what that sensitive work would be?

General ZWICKER. I do not.

The CHAIRMAN. I wonder if you can do this: You are appearing this afternoon in executive session. I would like to have you here to listen to all of this testimony. If you have an aide with you, I wonder if you could have somebody call Camp Kilmer and find out just what the sensitive work was that he was being considered for.

Mr. PERESS. I might be able to help you on that.

General ZWICKER. Even if I did know, I would not be privileged to tell you, under the Executive order which forbids us to discuss matters of that nature.

The CHAIRMAN. I may say, General, you will be in difficulty if you refuse to tell us what sensitive work a Communist was being considered for. There is no Executive order for the purpose of protecting Communists. I want to tell you right now, you will be asked that question this afternoon. You will be ordered to make available that information.

Mr. PERESS. I think I might know the answer to that, though I never heard about it. May I answer?

The CHAIRMAN. You may.

Mr. PERESS. Apparently I was considered the best dentist at the post there, and they needed an extra prosthodontist. And where I was doing general dentistry, which is filling and routine dentistry, they needed another man to help the prosthodontist.

In approximately May 1953, I was unofficially promoted to the prosthetic section, where I worked through August; and then, because there was a falling off in operative work, I was put back to doing operative work, because of the production there. The records will show that my production in operative was also the greatest in the clinic.

The CHAIRMAN. Let us return to the questions.

Mr. PERESS. This referred to a change of M. O. S., they called it.

The CHAIRMAN. We are dealing, not with sensitive nerves in the teeth; we are dealing with a security matter. I asked whether or not the general knew what sensitive security work you were being considered for. You say that had to do with the teeth.

Mr. PERESS. Well, it was approximately May 1953, that the colonel called me down and said that they had been considering me—not a promotion in rank, but a promotion in work—to go up to prosthetics and work there. It is my own opinion that I was very good.

The CHAIRMAN. Mr. Peress, the record shows that you signed a document identical to exhibit 9, which I will show you. You signed that under oath, certifying nonmembership in subversive organizations, naming the organizations—

Mr. PERESS. I decline to answer that question.

The CHAIRMAN. Let me finish before you decline.

When you signed that, were you falsely swearing, or were you telling the truth?

(The witness conferred with his counsel.)

Mr. PERESS. I decline to answer that question under the fifth amendment.

The CHAIRMAN. You are entitled to decline.

Mr. RAINVILLE. I am Harold Rainville, from Senator Dirksen's office. While the Senator is seeking certain material which he wants to question you on, may I just develop one thing which I think has been overlooked here.

Did you ever serve overseas?

(The witness conferred with his counsel.)

Mr. PERESS. No.

Mr. RAINVILLE. Were you ever ordered to go overseas?

Mr. PERESS. Yes.

Mr. RAINVILLE. Were your orders then changed?

Mr. PERESS. Yes.

Mr. RAINVILLE. Do you know why they were changed?

Mr. PERESS. I can only surmise. I was given no official reason.

Mr. RAINVILLE. Were you ever interrogated after the change, any discussion as to your future assignment?

Mr. PERESS. I had orders to go to Fort Lewis and to proceed from there to Yokohama, Japan. I got to Fort Lewis, and I got in touch with the Red Cross. They secured an emergency leave for me. I had compassionate reasons to request a reassignment. There are Army regulations under the title of "Compassionate Reassignment."

The Red Cross got—after investigating the case—got the time for me, and through channels I was reassigned to Camp Kilmer.

Mr. RAINVILLE. Do you mind telling us what the emergency was? (The witness conferred with his counsel.)

Mr. PERESS. Well, as you know, sir, they are part of the record, and I do mind telling you, because I don't feel it is integral to the investigation that you are carrying on now, the reasons for it. But they are part of the official records.

Mr. RAINVILLE. Well, if I am correct in my information, it was because your 6-year-old daughter needed psychiatric treatment; is that right?

Mr. PERESS. She was undergoing it at the time. That was one of the reasons.

Mr. RAINVILLE. Did you get any aid in receiving that cancellation of your embarkation orders, other than the Red Cross?

(The witness conferred with his counsel.)

Mr. PERESS. Could you be more specific about that, sir?

Mr. RAINVILLE. Let me be a little bit explanatory. We in the Senators' offices are frequently called upon for emergency help whenever there is a situation of this kind. We frequently find that in situations which are much more critical, a dying wife who is dying of cancer or a dying child, it makes it very difficult for us to stop an embarkation order even for a temporary reason.

I have no doubt your daughter needed the treatment. Nevertheless, it seems a little odd to me that you should be completely reassigned. A man with the ability as a dentist such as you have would certainly have been needed abroad. I wanted to know, Did you know somebody in the Adjutant General's office? You didn't speak to any Congressman or Senator, and yet just the Red Cross was able to stop it?

Mr. PERESS. I didn't speak to any Congressman or Senator, and the reasons are not as far-fetched as you attempt to seem to understand them at this point. As I say, the authority exists in the Army regulations, which are also available to you, and the Red Cross does the investigating as to whether there is really a compassionate need for consideration of the case as to stop an embarkation.

The CHAIRMAN. I think in fairness to the Red Cross—I do not know who investigated this case—as I understand it, the Red Cross merely makes an investigation and does not take any active part in getting a change or cancellation of orders. The Red Cross merely reports the facts. I believe that is correct. I may be wrong in that.

Mr. PERESS. As I was saying, the Red Cross reports on whether there exists sufficient reason to warrant a consideration by the Army, because otherwise the orders cannot be halted in time.

Mr. RAINVILLE. Very frequently the Red Cross comes to us and asks for our aid because very frequently they alone cannot get these things done in the time allowed.

My question is, if the Red Cross did this, and did it alone for you, from my experience in handling hundreds of these cases a week, for what is trivial compared to other things—not to you, of course, a trivial reason—I would like to know if you did not know someone some place, somebody in the Adjutant General's office, perhaps a party member?

Mr. PERESS. To my knowledge, I know nobody in the Adjutant General's office, without qualification.

Mr. RAINVILLE. In 1949, did you serve in a Communist cell with anybody who might have had influence in the Army, who was an officer in the Army?

(The witness conferred with his counsel.)

Mr. PERESS. That question I decline to answer, on the fifth amendment.

Mr. RAINVILLE. I presume it is useless to ask you whether or not that person still is in the Adjutant General's office?

Mr. PERESS. Which person?

Mr. RAINVILLE. The person you decline to answer about.

Mr. PERESS. Does such a person exist because of the posing of the question?

Mr. RAINVILLE. I would presume if he didn't exist, it would be easier for you to say no than to decline to answer.

(The witness conferred with his counsel.)

The CHAIRMAN. You will either talk for the record or you will talk only to your counsel. I will hear none of these speeches off the record from you. If you want to discuss any matter with your counsel, you will do it in an undertone so that only you and he can hear it. Otherwise you will speak for the record.

Mr. RAINVILLE. Just one last question. Your daughter is still undergoing these treatments, and that is the reason you were still here until February 2?

Mr. PERESS. I don't know the reason I am here, but my daughter is still undergoing the treatments.

The CHAIRMAN. There is one further question. Did a member of the Communist Party help you get your orders changed from Yokohama to Camp Kilmer?

(The witness conferred with his counsel.)

Mr. PERESS. I decline to answer that question on the grounds that it might tend to incriminate me.

The CHAIRMAN. Were you successful in forming a Communist cell at Camp Kilmer?

Mr. PERESS. I decline to answer that question under the fifth amendment.

The CHAIRMAN. Did your wife attend a Communist leadership school?

Mr. PERESS. I decline to answer that question.

The CHAIRMAN. Just to refresh your recollection, we will give you the name of the school.

Mr. COHN. It was the leadership training course at the Inwood Victory Club, which was conducted at 139 Dyckman Street.

The CHAIRMAN. With your memory refreshed, did you attend that leadership school?

Mr. PERESS. I decline to answer that question on the grounds that it might tend to incriminate me, under the fifth amendment.

The CHAIRMAN. How long have you been married?

Mr. PERESS. What is the question?

The CHAIRMAN. How long have you been married, just roughly? (The witness conferred with his counsel.)

Mr. PERESS. Is that relevant to this investigation?

The CHAIRMAN. Answer the question.

Mr. PERESS. Since June 7, 1942.

The CHAIRMAN. Does your wife have any brothers or sisters working for the Government?

(The witness conferred with his counsel.)

The CHAIRMAN. Or for any Government agency?

Mr. PERESS. I decline to answer that question.

The CHAIRMAN. You are ordered to answer that question.

Mr. PERESS. I decline to answer that question under the fifth amendment.

The CHAIRMAN. You go right ahead, Mister, and decline.

Do you have any brothers or sisters working for any Government agency?

Mr. PERESS. I decline to answer that question.

The CHAIRMAN. You are ordered to answer.

Mr. PERESS. I decline to answer.

The CHAIRMAN. Give us the names of your brothers.

(The witness conferred with his counsel.)

Mr. PERESS. William—

The CHAIRMAN. What is his last name? The same as yours?

Mr. PERESS. The same as mine.

The CHAIRMAN. What is his address?

(The witness conferred with his counsel.)

Mr. PERESS. Brooklyn. I will have to look it up.

The CHAIRMAN. Is he a member of the Communist Party?

Mr. PERESS. I decline to answer that.

The CHAIRMAN. Whereabouts in Brooklyn does William live?

Mr. PERESS. I don't know the name of the section.

The CHAIRMAN. The last question was: Where does William live in Brooklyn?

Mr. PERESS. I said I don't—what do you mean; the street?

The CHAIRMAN. Yes, as best you can tell us.

Mr. PERESS. I don't know.

The CHAIRMAN. You don't know what street he lives on?

Mr. PERESS. I am not sure. I know how to go there.

The CHAIRMAN. How do you go there?

Mr. PERESS. I drive on the Belt Parkway from my house and go down Flatlands Avenue. I don't know the streets where I turn over to go there.

The CHAIRMAN. What is your brother's occupation?

(The witness conferred with his counsel.)

Mr. PERESS. I decline to answer that question.

The CHAIRMAN. You are ordered to answer it.

Mr. PERESS. I decline, sir, under the fifth amendment.

The CHAIRMAN. Does he work for the Government, the United States Government?

Mr. PERESS. I decline to answer.

The CHAIRMAN. You are ordered to answer.

Mr. PERESS. I decline.

The CHAIRMAN. How many other brothers do you have?

Mr. PERESS. One.

The CHAIRMAN. What is his name?

Mr. PERESS. Same last name; Abraham Herbert.

The CHAIRMAN. And where does Abraham work?

(The witness conferred with his counsel.)

Mr. PERESS. Where does he work?

The CHAIRMAN. Yes.

Mr. PERESS. 10 Hillside Avenue.

The CHAIRMAN. 10 Hillside Avenue. What kind of work does he do?

(The witness conferred with his counsel.)

The CHAIRMAN. Let's put it this way: Does he work either in a defense plant or for any Government agency?

Mr. PERESS. I decline to answer that question under the fifth amendment.

The CHAIRMAN. Do you feel if you were to tell us the truth in answer to that question that answer might tend to incriminate you?

Mr. PERESS. It might.

The CHAIRMAN. Do you feel it might?

Mr. PERESS. I feel it might.

The CHAIRMAN. Do you feel if you were to tell us the truth as to where William worked that answer might tend to incriminate you?

Mr. PERESS. I feel it might.

The CHAIRMAN. Again, while I don't think I owe any duty to members of the Communist conspiracy, I do want to let you know what this committee intends to do, insofar as I, as chairman, can get them to do it, so you cannot claim you were entrapped or claim ignorance at some future proceedings. I intend to find out, obviously, what your two brothers are doing. If their occupation could in no way tend to incriminate you, I will ask that you be cited for contempt. I just want you to know that. I just want you to know that you Communists cannot play with the fifth amendment before this committee.

Do you have any sisters?

(The witness conferred with his counsel.)

The CHAIRMAN. While Mr. Peress is consulting with his counsel, Mr. Adams, what I would like to have this afternoon is the name of the individual who has been in charge of Peress' personnel file which we subpoenaed. I would like to have him before us under oath on the question of the completeness of the file.

I want to tell you, in view of the fact that we have always been laying our cards strictly on the table with you and with Mr. Stevens, that we have an inventory of the file at the time we subpoenaed it, and we have compared that with the file as handed to us. So I will want the man who was in charge of this file, who answered the subpoena and presented it—I want him here under oath to explain the discrepancy between the inventory which we received from another Government agency and the inventory as the file was handed to us.

I assume that you might have some difficulty getting him in here this afternoon. If possible, I would like to have him this afternoon; and if not, we will want to hear him in Washington next week.

Mr. PERESS. I will decline to answer that under the fifth amendment.

The CHAIRMAN. You decline to answer whether you have any sisters?

Mr. PERESS. I thought you were back on the other point. No; I have no sisters.

The CHAIRMAN. You have no sisters. Is your father living?

Mr. PERESS. Yes.

The CHAIRMAN. Is he working for the Government?

(The witness conferred with his counsel.)

Mr. PERESS. I decline to answer that question.

(The witness conferred with his counsel.)

The CHAIRMAN. What is your father's first name?

Mr. PERESS. On the last question, my father is not working at all.

The CHAIRMAN. Your father is not working?

(The witness conferred with his counsel.)

The CHAIRMAN. Mr. Peress, I realize this as a waste of the committee's time to ask you this question, except that we want the record complete. Can you tell us, can you shed any light at all on the question of why you were commissioned, why you were promoted, why you were given an honorable discharge after the public records disclosed that you were a Communist Party leader; after the record shows as early as April of 1953 your commanding officer and the commanding officer of the First Army joined in a recommendation to have you immediately separated after you refused to tell the Army whether you were a part of the Communist conspiracy?

As I say, I realize it is a waste of time asking you to answer the question, but I want to have the record complete. What is your answer?

Mr. PERESS. I really couldn't make a question out of it. Would you repeat it please?

The CHAIRMAN. No, it is not necessary.

Mr. PERESS. What was the significance of April 1953?

The CHAIRMAN. May I say, for the benefit of your counsel, while this fifth amendment Communist may have been removed from the court martial jurisdiction of the Army, he has not been removed from the jurisdiction of our civil courts. I am referring the entire record in this case, both in executive session and in public session, together with the affidavits which he has signed, obviously false affidavits, to the Justice Department with the suggestion that this be submitted to a grand jury for criminal prosecution.

I may say to counsel, as a courtesy to counsel, if you will keep in touch with the chief counsel of our committee, Mr. Roy Cohn, he will keep you informed as to the steps that we take in Mr. Peress' case.

Mr. Peress, you are not released from the subpoena. You will consider yourself under subpoena.

Let me ask counsel, when we want this individual again would you prefer that we notify you, or would you prefer that the notice go directly to Peress?

Mr. FAULKNER. You may notify me.

The CHAIRMAN. We try to give sufficient notice so that it can fit into your other work.

I assume 4 or 5 days or a week's time would be sufficient?

Mr. FAULKNER. We are ready, willing, and able to testify at any time we are called upon. We came down here the last time without subpoena, in executive session.

The CHAIRMAN. Yes. You were ordered down by the Army.

Mr. FAULKNER. There was no order, Mr. Senator.

The CHAIRMAN. We will not waste any time on that.

You understand, Mr. Peress, you are under subpoena. Your counsel will be notified when you are to return before the committee.

This afternoon at 2:30, we will hear the Army, certain Army officers, in executive session.

Again, may I say that the legal counsel for the Army is invited to be present, if he cares to.

Mr. FAULKNER. Are we requested to remain for the rest of the day?

The CHAIRMAN. No. You will be notified when you are wanted again.

(Whereupon, at 12:15 p. m., the public hearing was recessed, subject to call.)

TESTIMONY OF BRIG. GEN. RALPH W. ZWICKER, UNITED STATES ARMY; ACCOMPANIED BY CAPT. W. J. WOODWARD, MEDICAL CORPS, UNITED STATES ARMY

General ZWICKER. I do.

Before we start, there is no need for a medical officer to be in here.

The CHAIRMAN. That is O. K.

Mr. COHN. A man who is his own lawyer has a fool for a client, and it is the same thing with a man who tries to be his own doctor.

General, could we have your full name?

General ZWICKER. Ralph W. Zwickler.

Mr. COHN. General, to see if we can save a little time here, isn't the situation this—by the way, you have been commanding officer at Kilmer since when?

General ZWICKER. Since the middle of July last year.

Mr. COHN. Has the Peress case come to your attention since that time? I am not asking questions about it.

General ZWICKER. Yes.

Mr. COHN. It has come to your attention and you have a familiarity with that case?

General ZWICKER. Yes.

Mr. COHN. Now, general, would you like to be able to tell us exactly what happened in that case, and what steps you took and others took down at Kilmer to take action against Peress a long time before action was finally forced by the committee?

General ZWICKER. That is a toughie.

Mr. COHN. All I am asking you now is if you could, if you were at liberty to do so, would you like to be in a position to tell us that story?

General ZWICKER. Well, may I say that if I were in a position to do so, I would be perfectly glad to give the committee any information that they desired.

Mr. COHN. You certainly feel that that information would not reflect unfavorably on you; is that correct?

General ZWICKER. Definitely not.

Mr. COHN. And would not reflect unfavorably on a number of other people at Kilmer and the First Army?

General ZWICKER. Definitely not.

The CHAIRMAN. It would reflect unfavorably upon some of them, of course?

General ZWICKER. That I can't answer, sir. I don't know.

The CHAIRMAN. Well, you know that somebody has kept this man on, knowing he was a Communist, do you not?

General ZWICKER. No, sir.

The CHAIRMAN. You know that somebody has kept him on knowing that he has refused to tell whether he was a Communist, do you not?

General ZWICKER. I am afraid that would come under the category of the Executive order, Mr. Chairman.

The CHAIRMAN. What?

General ZWICKER. I am afraid an answer to that question would come under the category of the Presidential Executive order.

The CHAIRMAN. You will be ordered to answer the question.

General ZWICKER. Would you repeat the question, please?

Mr. COHN. Read it to the general.

(The question referred to was read by the reporter.)

General ZWICKER. I respectfully decline to answer, Mr. Chairman, on the grounds of the directive, Presidential directive, which, in my interpretation, will not permit me to answer that question.

The CHAIRMAN. You know that somebody signed or authorized an honorable discharge for this man, knowing that he was a fifth amendment Communist, do you not?

General ZWICKER. I know that an honorable discharge was signed for the man.

The CHAIRMAN. The day the honorable discharge was signed, were you aware of the fact that he had appeared before our committee?

General ZWICKER. I was.

The CHAIRMAN. And had refused to answer certain questions?

General ZWICKER. No, sir, not specifically on answering any questions. I knew that he had appeared before your committee.

The CHAIRMAN. Didn't you read the news?

General ZWICKER. I read the news releases.

The CHAIRMAN. And the news releases were to the effect that he had refused to tell whether he was a Communist, and that there was evidence that he had attended Communist leadership schools. It was on all the wire service stories, was it not? You knew generally what he was here for, did you not?

General ZWICKER. Yes; indeed.

The CHAIRMAN. And you knew generally that he had refused to tell whether he was a Communist, did you not?

General ZWICKER. I don't recall whether he refused to tell whether he was a Communist.

The CHAIRMAN. Are you the commanding officer there?

General ZWICKER. I am the commanding general.

The CHAIRMAN. When an officer appears before a committee and refuses to answer, would you not read that story rather carefully?

General ZWICKER. I read the press releases.

The CHAIRMAN. Then, General, you knew, did you not, that he appeared before the committee and refused, on the grounds of the fifth amendment, to tell about all of his Communist activities? You knew that, did you not?

General ZWICKER. I knew everything that was in the press.

The CHAIRMAN. Don't be coy with me, General.

General ZWICKER. I am not being coy, sir.

The CHAIRMAN. Did you have that general picture?

General ZWICKER. I believe I remember reading in the paper that he had taken refuge in the fifth amendment to avoid answering questions before the committee.

The CHAIRMAN. About communism?

General ZWICKER. I am not too certain about that.

The CHAIRMAN. Do you mean that you did not have enough interest in the case, General, the case of this major who was in your command, to get some idea of what questions he had refused to answer? Is that correct?

General ZWICKER. I think that is not putting it quite right, Mr. Chairman.

The CHAIRMAN. You put it right, then.

General ZWICKER. I have great interest in all of the officers of my command, with whatever they do.

The CHAIRMAN. Let's stick to fifth-amendment Communists, now. Let's stick to him. You told us you read the press releases.

General ZWICKER. I did.

The CHAIRMAN. But now you indicate that you did not know that he refused to tell about his Communist activities. Is that correct?

General ZWICKER. I know that he refused to answer questions for the committee.

The CHAIRMAN. Did you know that he refused to answer questions about his Communist activities?

General ZWICKER. Specifically, I don't believe so.

The CHAIRMAN. Did you have any idea?

General ZWICKER. Of course I had an idea.

The CHAIRMAN. What do you think he was called down here for?

General ZWICKER. For that specific purpose.

The CHAIRMAN. Then you knew that those were the questions he was asked, did you not? General, let's try and be truthful. I am going to keep you here as long as you keep hedging and hemming.

General ZWICKER. I am not hedging.

The CHAIRMAN. Or hawing.

General ZWICKER. I am not hawing, and I don't like to have anyone impugn my honesty, which you just about did.

The CHAIRMAN. Either your honesty or your intelligence; I can't help impugning one or the other, when you tell us that a major in your command who was known to you to have been before a Senate committee, and of whom you read the press releases very carefully—to now have you sit here and tell us that you did not know whether he refused to answer questions about Communist activities. I had seen all the press releases, and they all dealt with that. So when you do that, General, if you will pardon me, I cannot help but question either your honesty or your intelligence, one or the other. I want to be frank with you on that.

Now, is it your testimony now that at the time you read the stories about Major Peress, that you did not know that he had refused to answer questions before this committee about his Communist activities?

General ZWICKER. I am sure I had that impression.

The CHAIRMAN. Did you also read the stories about my letter to Secretary of the Army Stevens in which I requested or, rather, suggested that this man be court-martialed, and that anyone that protected him or covered up for him be court-martialed?

General ZWICKER. Yes, sir.

The CHAIRMAN. That appeared in the papers on Sunday and Monday, right?

General ZWICKER. I don't recall the exact date.

The CHAIRMAN. At least, it appeared before he got his honorable discharge?

General ZWICKER. I don't know that that was true, either, sir.

The CHAIRMAN. In any event, you saw it in a current paper, did you?

General ZWICKER. I did.

The CHAIRMAN. You did not see the story later. So that at the time he was discharged, were you then aware of the fact that I had suggested a court-martial for him and for whoever got him special consideration?

General ZWICKER. If the time jibes, I was.

The CHAIRMAN. Were you aware that he was being given a discharge on February 2? In other words, the day he was discharged, were you aware of it?

General ZWICKER. Yes; yes, sir.

The CHAIRMAN. Who ordered his discharge?

General ZWICKER. The Department of the Army.

The CHAIRMAN. Who in the Department?

General ZWICKER. That I can't answer.

Mr. COHN. That isn't a security matter?

General ZWICKER. No. I don't know. Excuse me.

Mr. COHN. Who did you talk to? You talked to somebody?

General ZWICKER. No, I did not.

Mr. COHN. How did you know he should be discharged?

General ZWICKER. You also have a copy of this. I don't know why you asked me for it. This is the order under which he was discharged, a copy of that order.

The CHAIRMAN. Just a minute.

You are referring to an order of January 19.

General ZWICKER. I am not sure, sir. Just a moment.

The CHAIRMAN. January 18. Will you tell me whether or not you were at all concerned about the fact that this man was getting an honorable discharge after the chairman of the Senate Investigating Committee had suggested to the Department of the Army that he be court-martialed? Did that give you any concern?

General ZWICKER. It may have concerned me, but it could not have changed anything that was done in carrying out this order.

The CHAIRMAN. Did you take any steps to have him retained until the Secretary of the Army could decide whether he should be court-martialed?

General ZWICKER. No, sir.

The CHAIRMAN. Did it occur to you that you should?

General ZWICKER. No, sir.

The CHAIRMAN. Could you have taken such steps?

General ZWICKER. No, sir.

The CHAIRMAN. In other words, there is nothing you could have done; is that your statement?

General ZWICKER. That is my opinion.

Mr. RAINVILLE. May I interrupt a minute? Doesn't that order specifically state that this is subject to your check as to whether he is in good health and can be discharged?

General ZWICKER. May I read it?

Mr. RAINVILLE. I read the order. It is in there.

General ZWICKER. Paragraph 5 of this order states:

Officer will not be separated prior to determination that he is physically qualified for separation by your headquarters.

Mr. RAINVILLE. That is a decision that you must make?

General ZWICKER. Not me personally. My medical officers.

Mr. RAINVILLE. But he would report to you. He would not make the decision without giving you, the commanding general, the order for final verification?

General ZWICKER. It would not be necessary. If something were found wrong physically with the man, he would be retained.

Mr. RAINVILLE. He would report to you?

General ZWICKER. No. He would be retained.

Mr. RAINVILLE. It would be automatic, and you would not have to sign anything?

General ZWICKER. I would not personally, no. The medical officer would make such a report.

Mr. RAINVILLE. But there was somebody in your outfit who could say, "This man can go out or can't go out," and that was the doctor?

General ZWICKER. He could not keep him in if he were physically qualified for separation.

Mr. RAINVILLE. But he could say he could not go out, so that there was discretion within that 90-day period.

The CHAIRMAN. Let me ask this question: If this man, after the order came up, after the order of the 18th came up, prior to his getting an honorable discharge, were guilty of some crime—let us say that he held up a bank or stole an automobile—and you heard of that the day before—let us say you heard of it the same day that you heard of my letter—could you then have taken steps to prevent his discharge, or would he have automatically been discharged?

General ZWICKER. I would have definitely taken steps to prevent discharge.

The CHAIRMAN. In other words, if you found that he was guilty of improper conduct, conduct unbecoming an officer, we will say, then you would not have allowed the honorable discharge to go through, would you?

General ZWICKER. If it were outside the directive of this order?

The CHAIRMAN. Well, yes, let us say it were outside the directive.

General ZWICKER. Then I certainly would never have discharged him until that part of the case——

The CHAIRMAN. Let us say he went out and stole \$50 the night before.

General ZWICKER. He wouldn't have been discharged.

The CHAIRMAN. Do you think stealing \$50 is more serious than being a traitor to the country as part of the Communist conspiracy?

General ZWICKER. That, sir, was not my decision.

The CHAIRMAN. You said if you learned that he stole \$50, you would have prevented his discharge. You did learn something much more serious than that. You learned that he had refused to tell whether he was a Communist. You learned that the chairman of a Senate committee suggested he be court-martialed. And you say if he had stolen \$50 he would not have gotten the honorable discharge. But merely being a part of the Communist conspiracy, and the chairman of the

committee asking that he be court-martialed, would not give you grounds for holding up his discharge. Is that correct?

General ZWICKER. Under the terms of this letter, that is correct, Mr. Chairman.

The CHAIRMAN. That letter says nothing about stealing \$50, and it does not say anything about being a Communist. It does not say anything about his appearance before our committee. He appeared before our committee after that order was made out.

Do you think you sound a bit ridiculous, General, when you say that for \$50, you would prevent his being discharged, but for being a part of the conspiracy to destroy this country you could not prevent his discharge?

General ZWICKER. I did not say that, sir.

The CHAIRMAN. Let's go over that. You did say if you found out he stole \$50 the night before, he would not have gotten an honorable discharge the next morning?

General ZWICKER. That is correct.

The CHAIRMAN. You did learn, did you not, from the newspaper reports, that this man was part of the Communist conspiracy, or at least that there was strong evidence that he was. Did you not think that was more serious than the theft of \$50?

General ZWICKER. He has never been tried for that, sir, and there was evidence, Mr. Chairman—

The CHAIRMAN. Don't you give me doubletalk. The \$50 case, that he had stolen the night before, he has not been tried for that.

General ZWICKER. That is correct. He didn't steal it yet.

The CHAIRMAN. Would you wait until he was tried for stealing the \$50 before you prevented his honorable discharge?

General ZWICKER. Either tried or exonerated.

The CHAIRMAN. You would hold up the discharge until he was tried or exonerated?

General ZWICKER. For stealing the \$50; yes.

The CHAIRMAN. But if you heard that this man was a traitor—in other words, instead of hearing that he had stolen \$50 from the corner store, let us say you heard that he was a traitor, he belonged to the Communist conspiracy; that a Senate committee had the sworn testimony to that effect. Then would you hold up his discharge until he was either exonerated or tried?

General ZWICKER. I am not going to answer that question, I don't believe, the way you want it, sir.

The CHAIRMAN. I just want you to tell me the truth.

General ZWICKER. On all of the evidence or anything that had been presented to me as Commanding General of Camp Kilmer, I had no authority to retain him in the service.

The CHAIRMAN. You say that if you had heard that he had stolen \$50, then you could order him retained. But when you heard that he was part of the Communist conspiracy, that subsequent to the time the orders were issued a Senate committee took the evidence under oath that he was part of the conspiracy, you say that would not allow you to hold up his discharge?

General ZWICKER. I was never officially informed by anyone that he was part of the Communist conspiracy, Mr. Senator.

The CHAIRMAN. Well, let's see now. You say you were never officially informed?

General ZWICKER. No.

The CHAIRMAN. If you heard that he had stolen \$50 from someone down the street, if you did not hear it officially, then could you hold up his discharge? Or is there some peculiar way you must hear it?

General ZWICKER. I believe so, yes, sir, until I was satisfied that he had or hadn't, one way or the other.

The CHAIRMAN. You would not need any official notification so far as the 50 bucks is concerned?

General ZWICKER. Yes.

The CHAIRMAN. But you say insofar as the Communist conspiracy is concerned, you need an official notification?

General ZWICKER. Yes, sir; because I was acting on an official order, having precedence over that.

The CHAIRMAN. How about the \$50? If one of your men came in a half hour before he got his honorable discharge and said, "General, I just heard downtown from a police officer that this man broke into a store last night and stole \$50," you would not give him an honorable discharge until you had checked the case and found out whether that was true or not; would you?

General ZWICKER. I would expect the authorities from downtown to inform me of that or, let's say, someone in a position to suspect that he did it.

The CHAIRMAN. Let's say one of the trusted privates in your command came in to you and said, "General, I was just downtown and I have evidence that Major Peress broke into a store and stole \$50." You would not discharge him until you had checked the facts, seen whether or not the private was telling the truth and seen whether or not he had stolen the \$50?

General ZWICKER. No; I don't believe I would. I would make a check, certainly, to check the story.

The CHAIRMAN. Would you tell us, General, why \$50 is so much more important to you than being part of the conspiracy to destroy a nation which you are sworn to defend?

General ZWICKER. Mr. Chairman, it is not, and you know that as well as I do.

The CHAIRMAN. I certainly do. That is why I cannot understand you sitting there, General, a General in the Army, and telling me that you could not, would not, hold up his discharge having received information——

General ZWICKER. I could not hold up his discharge.

The CHAIRMAN. Why could you not do it in the case of an allegation of membership in a Communist conspiracy, where you could if you merely heard some private's word that he had stolen \$50?

General ZWICKER. Because, Mr. Senator, any information that appeared in the press or any releases was well known to me and well known to plenty of other people long prior to the time that you ever called this man for investigation, and there were no facts or no allegations, nothing presented from the time that he appeared before your first investigation that was not apparent prior to that time.

The CHAIRMAN. In other words, as you sat here this morning and listened to the testimony you heard nothing new?

Mr. COHN. Nothing substantially new?

General ZWICKER. I don't believe so.

The CHAIRMAN. So that all of these facts were known at the time he was ordered to receive an honorable discharge?

General ZWICKER. I believe they are all on record; yes, sir.

The CHAIRMAN. Do you think, General, that anyone who is responsible for giving an honorable discharge to a man who has been named under oath as a member of the Communist conspiracy should himself be removed from the military?

General ZWICKER. You are speaking of generalities now, and not on specifics—is that right, sir, not mentioning about any one particular person?

The CHAIRMAN. That is right.

General ZWICKER. I have no brief for that kind of person, and if there exists or has existed something in the system that permits that, I say that that is wrong.

The CHAIRMAN. I am not talking about the system. I am asking you this question, General, a very simple question: Let us assume that John Jones, who is a major in the United States Army—

General ZWICKER. A what, sir?

The CHAIRMAN. Let us assume that John Jones is a major in the United States Army. Let us assume that there is sworn testimony to the effect that he is part of the Communist conspiracy, has attended Communist leadership schools. Let us assume that Maj. John Jones is under oath before a committee and says, "I cannot tell you the truth about these charges because, if I did, I fear that might tend to incriminate me." Then let us say that General Smith was responsible for this man receiving an honorable discharge, knowing these facts. Do you think that General Smith should be removed from the military, or do you think he should be kept on in it?

General ZWICKER. He should be by all means kept if he were acting under competent orders to separate that man.

The CHAIRMAN. Let us say he is the man who signed the orders. Let us say General Smith is the man who originated the order.

General ZWICKER. Originated the order directing his separation?

The CHAIRMAN. Directing his honorable discharge.

General ZWICKER. Well, that is pretty hypothetical.

The CHAIRMAN. It is pretty real, General.

General ZWICKER. Sir, on one point, yes. I mean, on an individual, yes. But you know that there are thousands and thousands of people being separated daily from our Army.

The CHAIRMAN. General, you understand my question—

General ZWICKER. Maybe not.

The CHAIRMAN. And you are going to answer it.

General ZWICKER. Repeat it.

The CHAIRMAN. The reporter will repeat it.

(The question referred to was read by the reporter.)

General ZWICKER. That is not a question for me to decide, Senator.

The CHAIRMAN. You are ordered to answer it, General. You are an employee of the people.

General ZWICKER. Yes, sir.

The CHAIRMAN. You have a rather important job. I want to know how you feel about getting rid of Communists.

General ZWICKER. I am all for it.

The CHAIRMAN. All right. You will answer that question, unless you take the fifth amendment. I do not care how long we stay here, you are going to answer it.

General ZWICKER. Do you mean how I feel toward Communists?

The CHAIRMAN. I mean exactly what I asked you, General; nothing else. And anyone with the brains of a 5-year-old child can understand that question.

The reporter will read it to you as often as you need to hear it so that you can answer it, and then you will answer it.

General ZWICKER. Start it over, please.

(The question was reread by the reporter.)

General ZWICKER. I do not think he should be removed from the military.

The CHAIRMAN. Then, General, you should be removed from any command. Any man who has been given the honor of being promoted to general and who says, "I will protect another general who protected Communists," is not fit to wear that uniform, General. I think it is a tremendous disgrace to the Army to have this sort of thing given to the public. I intend to give it to them. I have a duty to do that. I intend to repeat to the press exactly what you said. So you know that. You will be back here, General.

Do you know who initiated the order for the honorable discharge of this major?

General ZWICKER. As a person, sir?

The CHAIRMAN. Yes.

General ZWICKER. No, I do not.

The CHAIRMAN. Have you tried to find out?

General ZWICKER. No, I have not.

The CHAIRMAN. Have you discussed that matter with Mr. Adams?

General ZWICKER. As a person, no, sir.

The CHAIRMAN. How did you discuss it with him other than as a person?

General ZWICKER. I mean as an individual. This is a Department of the Army order.

The CHAIRMAN. Have you tried to find out who is responsible?

General ZWICKER. Who signed this order?

The CHAIRMAN. Who was responsible for the order?

General ZWICKER. No, sir; I have not.

The CHAIRMAN. Are you curious?

General ZWICKER. Frankly, no.

The CHAIRMAN. You were fully satisfied, then, when you got the order to give an honorable discharge to this Communist major?

General ZWICKER. I am sorry, sir?

The CHAIRMAN. Read the question.

(The question was read by the reporter.)

General ZWICKER. Yes, sir; I was.

Mr. COHN. General, I have just one or two questions.

The CHAIRMAN. Let me ask one question.

In other words, you think it is proper to give an honorable discharge to a man known to be a Communist?

General ZWICKER. No, I do not.

The CHAIRMAN. Why do you think it is proper in this case?

General ZWICKER. Because I was ordered to do so.

The CHAIRMAN. In other words, anything that you are ordered to do, you think is proper?

General ZWICKER. That is correct. Anything that I am ordered to do by higher authority, I must accept.

The CHAIRMAN. Do you think that the higher authority would be guilty of improper conduct?

General ZWICKER. It is conceivable.

The CHAIRMAN. Do you think they are guilty of improper conduct here?

General ZWICKER. I am not their judge, sir.

The CHAIRMAN. Do you think to order the honorable discharge for a Communist major was improper conduct?

General ZWICKER. I think it was improper procedure, sir.

The CHAIRMAN. Do you think it is improper?

Mr. COHN. General, I just want to ask you this: Peress was discharged on February 2, which was a Tuesday.

General ZWICKER. That is right.

Mr. COHN. He appeared before the committee on Saturday. On Monday or Tuesday, did you speak to anybody in the Department of the Army in Washington, telephonically, about the Peress case? On Monday or Tuesday?

General ZWICKER. Let me think a minute.

It is possible that I called First Army to inform them that Peress had changed his mind and desired a discharge as soon as possible.

Mr. COHN. Who would you have told in the First Army? Who would you call? G-2, or General Burrese?

General ZWICKER. I don't think in that case I would call General Burrese.

Mr. COHN. General Seabree?

General ZWICKER. No. It would have been G-1, or Deputy Chief of Staff.

Mr. COHN. Who is that?

General ZWICKER. General Gurney.

Mr. COHN. You don't remember which one it was?

General ZWICKER. I don't recall that I called.

Mr. COHN. Did you talk to Mr. Adams in those days?

General ZWICKER. No, sir.

Mr. COHN. Did you ever talk to Mr. Adams before yesterday? You recall whether or not you spoke to him.

General ZWICKER. I know Mr. Adams, yes. There was one call, but I think that came from a member of your committee, from Washington, requesting that this man appear before your committee first.

The CHAIRMAN. You understand the question. Did you talk to Mr. Adams before yesterday?

General ZWICKER. I don't recall. I don't believe so, sir.

The CHAIRMAN. Did you talk to anyone in Washington?

General ZWICKER. No, sir, about this case.

The CHAIRMAN. Within the week preceding his discharge?

General ZWICKER. No, sir.

The CHAIRMAN. Did you at any time ever object to this man being honorably discharged?

General ZWICKER. I respectfully decline to answer that, sir.

The CHAIRMAN. You will be ordered to answer it.

General ZWICKER. That is on the grounds of this Executive order.

The CHAIRMAN. You are ordered to answer. That is a personnel matter.

General ZWICKER. I shall still respectfully decline to answer it.

The CHAIRMAN. Did you ever take any steps which would have aided him in continuing in the military after you knew that he was a Communist?

General ZWICKER. That would have aided him in continuing, sir?

The CHAIRMAN. Yes.

General ZWICKER. No.

The CHAIRMAN. Did you ever do anything instrumental in his obtaining his promotion after knowing that he was a fifth-amendment case?

General ZWICKER. No, sir.

The CHAIRMAN. Did you ever object to his being promoted?

General ZWICKER. I had no opportunity to, sir.

The CHAIRMAN. Did you ever enter any objection to the promotion of this man under your command?

General ZWICKER. I had no opportunity to do that.

The CHAIRMAN. You say you did not; is that correct?

General ZWICKER. That is correct.

The CHAIRMAN. And you refuse to tell us whether you objected to his obtaining an honorable discharge?

General ZWICKER. I don't believe that is quite the way the question was phrased before.

The CHAIRMAN. Well, answer it again, then.

General ZWICKER. I respectfully request that I not answer that question.

The CHAIRMAN. You will be ordered to answer.

General ZWICKER. Under the same authority as cited before, I cannot answer it.

Mr. COHN. Did anybody on your staff, General—Colonel Brown or anyone in G-2—communicate with the Department of the Army on February 1 or February 2? In other words, in connection with the discharge?

General ZWICKER. I don't know, but I don't believe so.

Mr. COHN. To the best of your knowledge, no?

General ZWICKER. No.

Mr. COHN. In other words, on January 18, 1954, you received a direction from the Secretary, signed by the Adjutant General, I assume that is General Bergin, telling you to give this man an honorable discharge from the Army at any practicable date, depending on his desire, but in no event later than 90 days; that that was the order, and you had nothing from the order to change that order in view of his testimony before the committee; and therefore, when the man came in and wanted an honorable discharge, you felt under this order compelled to give it to him as a decision that had been made by the Adjutant General. Is that correct?

General ZWICKER. That is correct.

Mr. COHN. And you received no additional words from the Adjutant General on February 1 or February 2, and before you gave the discharge you did not call and say, "In view of all of this, and his testimony on Saturday, and Senator McCarthy's request for a court-martial, this man is in here now, and is that all right?" You never made any such call?

General ZWICKER. No; I did not.

Mr. RAINVILLE. General, I think at one place there you said he changed his request to an immediate discharge?

General ZWICKER. That is correct.

Mr. RAINVILLE. Then he had previously objected to the discharge or at least he wanted the full 90 days?

General ZWICKER. No, sir. He requested to be discharged on March 31, I think, which would make it 60 days from receipt, rather than the full 90. He did not ask for the full 90, but he asked for what amounted to 60 days, 2 months.

Mr. RAINVILLE. Then he came in as soon as he testified, and asked for an immediate discharge and it was processed routinely?

General ZWICKER. That is correct.

Mr. RAINVILLE. But you never thought it necessary after he appeared before the committee or when he made that request to discuss his appearance before the committee with him?

General ZWICKER. I am sorry.

Mr. RAINVILLE. My question is this: After he appeared before the committee and he was still a member of your command, even though he was on separation, you didn't ask him to come in and report what he testified to?

General ZWICKER. No, sir.

Mr. RAINVILLE. And you didn't think it was necessary when he came in and asked for an immediate discharge instead of 60 days to ask him what transpired so as to get some kind of an idea as to why he wanted it immediately, or why he is in a rush to get out now instead of taking the 60 days that he wanted before that?

General ZWICKER. That was beyond my prerogative. I did not.

Mr. RAINVILLE. As an officer of your command, certainly what we usually call the old man's privilege there, prerogative, they may ask that sort of question, and so forth, so long as he is one of your command. But you didn't do it?

General ZWICKER. No. He told me he wanted to be released and I said, "All right."

Mr. JONES. General, did the counsel of the Army advise you not to discuss the Peress case?

General ZWICKER. He did not.

Mr. JONES. He did not advise you?

General ZWICKER. No, sir.

The CHAIRMAN. Who did advise you?

General ZWICKER. No one.

The CHAIRMAN. What did you and Mr. Adams talk about yesterday?

General ZWICKER. Mr. Adams and I talked about the various procedures of prior meetings such as this. He tried to indicate what I might expect.

Mr. JONES. Did Mr. Adams advise anyone not to discuss the Peress case to this committee?

General ZWICKER. I am sorry. He did not advise me.

Mr. JONES. I mean to your knowledge, did he advise any other person?

General ZWICKER. To my knowledge he did not.

Mr. JONES. General, what is your considered opinion of this order here forbidding you to assist this committee in exposing the Communist conspiracy in the Army?

General ZWICKER. Sir, I cannot answer that, because it is signed by the President. The President says don't do it and therefore I don't.

Mr. JONES. What is your considered opinion of that order? You see now, here is a perfectly good example of a Communist being promoted right in the ranks, all because of this Executive order here, in many respects, where we could not get at these things earlier. What is your considered opinion of an order of that nature?

General ZWICKER. I won't answer that, because I will not criticize my Commander in Chief.

The CHAIRMAN. General, you will return for a public session at 10:30 Tuesday morning.

General ZWICKER. This coming Tuesday?

The CHAIRMAN. Yes.

General ZWICKER. Here?

The CHAIRMAN. Yes.

General ZWICKER. At what time?

The CHAIRMAN. 10:30. In the meantime, in accordance with the order which you claim forbids you the right to discuss this case, you will contact the proper authority who can give you permission to tell the committee the truth about the case before you appear Tuesday, and request permission to be allowed to tell us the truth above the—

General ZWICKER. Sir, that is not my prerogative, either.

The CHAIRMAN. You are ordered to do it.

General ZWICKER. I am sorry, sir, I will not do that.

The CHAIRMAN. All right.

General ZWICKER. If you care to have me, I will cite certain other portions of this.

The CHAIRMAN. You need cite nothing. You may step down.

(Whereupon, at 5:15 p. m., the committee was recessed, subject to the call of the Chair.)

* * * * *

The CHAIRMAN. Counsel tell me they are prepared to treat this as an overall matter; they do not want to take it in installments. They want to see what the witness has testified to.

Some members of the committee would like to ask questions, now, but counsel will reserve cross-examination until the entire testimony of Senator McCarthy is in.

Mr. WILLIAMS. This will be more orderly, if we were to hear this issue, direct and cross.

Now, that is the only reason I suggested it.

The CHAIRMAN. They indicated they were prepared to cross-examine, when you had finished with his direct.

Mr. WILLIAMS. I see. We certainly yield to Mr. Chadwick's wishes.

The CHAIRMAN. Does any Senator wish to ask questions at this point?

Senator CARLSON. Mr. Chairman—

The CHAIRMAN. Senator Carlson.

Senator McCARTHY. But before you start, I wonder if I could impose on the Chair for a brief recess.

The CHAIRMAN. We will take a 10-minute recess at this point.

(Whereupon, at 3:32 p. m. a 16-minute recess was taken.)

The CHAIRMAN. The committee will resume session.

Senator McCARTHY. I want to thank the Chair for that recess.

The CHAIRMAN. The Chair appreciated the recess as well.

Senator Carlson was asking for recognition as we recessed.

Senator CARLSON. Mr. Chairman, I would just like to ask a few questions on the methods of operation and committee procedure.

I note from the hearings—and I think the Senator also testified—for instance, on the hearings on Thursday, February 18, it is stated that present were:

Senator Joseph R. McCarthy, Roy Cohn, Daniel Buckley, James Juliana, Harold Rainville, administrative assistant to Senator Dirksen, and Robert Jones, administrative assistant to Senator Potter.

Now, in checking through these hearings, I note, for instance, on page 130 Mr. Jones, the administrative assistant to Senator Potter, participated in the interrogation, and I noticed on page 137 a rather extensive cross-examination by Mr. Rainville of Mr. Peress. I would like to ask the Senator if it has been the policy of the committee to permit administrative assistants to participate in the cross-examination of witnesses.

Senator McCARTHY. Yes. Whenever a man was present representing a Senator, I felt that he should be entitled to ask questions.

Senator CARLSON. May I ask the Senator if that is based on committee action?

Has any action on the part of the Committee on Government Operations, an official motion, given this authority?

Senator McCARTHY. There was no formal action taken on that. It was a four-man committee then, you understand. The Democrats were not on the committee, but it was understood I would allow the administrative assistants to cross-examine. That was agreed in by, I believe, the committee unanimously.

Senator CARLSON. Do I understand there was official action taken, for instance, by the subcommittee of Government Operations Committee?

Senator McCARTHY. I don't know if you would call it official or not, but it was not a formal meeting at which a motion was passed. However, I told the Senators, if it was all right with them, in view of the fact they were out of the city during the recess, I would allow their administrative assistants to appear and represent them and speak for them and notify them each night, or as often as I felt necessary, as to what had transpired during that day.

One of the Senators, Senator Mundt, requested additional information. He requested that the chief of staff wire him after each hearing and give him a résumé of what had transpired. The other two Senators were satisfied to let their administrative assistants represent them.

Senator CARLSON. Mr. Chairman, I bring this up because I am a member of the subcommittee headed by Senator Jenner, of Indiana, and also another member of the committee is Senator Carl Hayden of Arizona, which has been holding extensive hearings on rules and changes of committee procedure, and it seems to me this is one of the important matters that should be given some consideration, not only by our committee, but I think, in view of the criticism we are receiving over the Nation, not on just the conduct of this particular committee, but committee procedure generally, there ought to be some firm decision made, which I assume, of course, would have to be a Senate decision on permitting administrative assistants to sit for

Senators appointed to the United States Senate on committees and participate in the proceedings.

I can readily understand where an administrative assistant might be assigned to listen in and get testimony and report, but I would have a serious question about administrative assistants, unless by unanimous action of the committee, participating in cross-examination.

Senator McCARTHY. May I say, Senator, we allow counsel for the committee—we allow staff members—to cross-examine where they are aware of the facts, and I can frankly see no objection to having an administrative assistant present and represent a Senator and ask questions.

Senator CARLSON. Mr. Chairman, my only point was: If we followed this thing and continued it, not only as a practice in the United States Senate but continued to expand on this method of procedure, the time will come when we might as well let the administrative assistants sit and the rest of us go fishing. It seems to me it is something that ought to have serious consideration, not only by this committee, but I think by the Senate as a whole.

That is the reason I wanted to bring it up.

Senator McCARTHY. May I say to the Senator from Kansas the reason we did this was because the other Senators were extremely busy. We felt they should be kept informed from day to day as to what we were doing and the administrative assistants were there principally as observers; but we did allow them the courtesy of asking questions. Whether that is a proper procedure or not is certainly open to debate.

Senator CARLSON. Mr. Chairman, this will probably be ruled by the chairman as very immaterial and very irrelevant, but I think I should state for the record that committees operate differently.

I happen to be a member of the Finance Committee and during the illness of Senator Butler of Nebraska, it was suggested by the Senator, himself, that his administrative assistant be permitted to sit in the hearings, and the chairman of the committee, Senator Millikin, as well as the ranking minority member Senator George, stated not only at this time but in all past sessions they have refused to permit administrative assistants to sit in as a representative of a Senator and participate in any way in the hearing.

The CHAIRMAN. I would say, Senator Carlson, one of the matters referred to us in Senate Resolution 301 was the amendment offered by Mr. Bush, which consisted of a set of rules that he was proposing.

Now, while the matter discussed here today is entirely different than the Bush amendment, still, at the same time, that is one of the subjects before us, and I think, inasmuch as the record did show these administrative assistants as participants in the cross-examination of witnesses there, including, as I recall, General Zwicker, it would be a proper question to ask Senator McCarthy in the overall picture, the overall problem that has been placed before us.

Senator McCARTHY. At the proper time, I would like to comment on Senator Bush's proposal. I assume the chairman doesn't want that now.

The CHAIRMAN. No, not now. We will probably make disposition of it otherwise than by holding hearings.

Senator Stennis.

Senator STENNIS. I have no question now, Mr. Chairman. I did not address the chairman.

The CHAIRMAN. Senator Johnson.

Senator JOHNSON of Colorado. No questions.

The CHAIRMAN. Senator Case?

Senator CASE. No questions now.

The CHAIRMAN. Senator Ervin.

Sentaor ERVIN. No questions.

The CHAIRMAN. I have 1 or 2 questions, Senator McCarthy, I would like to ask you with respect to your views on the investigating power since this question, this particular issue, we have been talking about today, goes directly to the conduct of hearings and the matter of investigations.

What is your view with respect to the right of Senators to lecture witnesses, or sort of pass judgment on them, whether they are guilty and all that sort of thing, in connection with these hearings?

I notice not only in this record we have before us, but in other records of other committees occasionally a Senator takes out after a witness who has come in there to testify, even on some legislative matter—and, of course, this particular investigation we were conducting, I think, comes squarely within the investigative power with respect to investigation.

What is your view with respect to the right of a Senator to go beyond the questioning in getting material? What right does he have to go beyond that in the conduct of these hearings?

Senator MCCARTHY. I think it is part of the cross-examination. He can make comments. He can try to induce a witness to tell the truth and oftentimes you have a witness that you can induce to tell the truth.

Take, or example, if I may give you an incident, we had a man before us in New York. We talked to him. After some discussion, he said that he could come in and give us all the facts that he had at his command.

I don't think strictly from the standpoint of lecturing, no, but if it is part of the cross-examination, I think there should be considerable latitude in cross-examination. That is the only way you can get at the facts.

The CHAIRMAN. You mean in the way of questions and in the way of statements? When I said "lecturing," maybe I put it too severely. I am very curious about this whole thing because I have held a number of hearings myself as a member of the Internal Security Committee.

Incidentally, those were one-man hearings involving Communists and Communists that have infiltrated into labor unions and all that sort of thing, and I know the exasperation and irritation and the provocation there in a very strong degree with some of the witnesses. But I have always wondered how far I dared to go. I don't think I have come to the extent yet of finding him guilty of anything. I simply permitted them to make the record and answer the questions and let it go at that. I know other chairmen—I am not calling this to your attention because you have said things about witnesses here, but because it is a general practice, I noticed in some committees, it to be a practice for the interrogator to take after the witness, not with questions but with statements. That is what I would like to get your

attitude on, because it had a bearing on your attitude in this particular instance, this episode we are discussing now.

Senator McCARTHY. Mr. Chairman, may I say this, that I don't think you can endow any chairman with ability or brains by any rules that you pass. I think it is up to the chairman of each committee to use his own judgment in trying to get at the truth. I have been a judge; you have been a judge. I have seen cross-examiners use various different techniques in attempting to get a witness to tell the truth, and I just don't know of any rule that you can pass along that line.

In this case, we did find that after I told the general what I thought his duties were, he did change his position and come through with a different story which I hope was the truth.

As I say, it is just the question of technique of cross-examination. I don't think that any man here at the table has the same technique.

The CHAIRMAN. I understand that. Each examiner will have a different approach, but I am talking about questions now. You were mentioning questions with respect to the cross-examination itself. Do you think it is a proper part of cross-examination or an examination of a witness—and I am asking this in good faith, because I want to get the points of view—to say derogatory things or to pass judgment in a way, in a measure upon the witness who is being examined.

Senator McCARTHY. Mr. Chairman, all I can say is that when you are cross-examining a witness, if you are honestly and sincerely trying to get to the facts, if you have got an obstreperous witness, in your question you may have to make statements which will try to induce him to give you the truth. I don't call it lecturing.

The CHAIRMAN. Let's say observations, making comments and observations. Let's make it as mild as we can.

Senator McCARTHY. I think it is all right to make observations.

Take, for example, I know we had a woman before us, Ruth Levine, who was in the telecommunications, if I may give an example, handling top-secret material for some 10 years. I made observations. I begged her to come forth and tell the truth, give us the facts; told her that the country had treated her well; that I thought she owed a duty not to take the fifth amendment. She said she wanted one day to think it over and discuss it with her lawyer and she might come back and give us the names of the fellow members of the conspiracy. I supposed that might be considered as a lecture. I would consider it as a part of questioning, part of an attempt to get the truth. If you were questioning her, you might take an entirely different tack; I don't know. I think it is up to the individual who is doing the questioning.

I think you certainly should not abuse the witness, no question about that, but there are times when, as you know, you must get very vigorous in your cross-examination. When you know that a witness is not telling the truth, you know he is hiding the facts, then you have got to use whatever technique you think is the best way of getting the truth.

As Winslow said, cross-examination is a process of winnowing the facts and trying to arrive at the truth and sometimes you may coax, you may beg a witness to tell the truth; you may suggest to them what the effects of perjuring themselves are. I think that is all proper. If you talk to a witness and tell them what will happen if they are guilty of perjury, the effect upon their families and that sort of thing, that might be considered a lecture.

I think it is proper if you think it is the best way to get the facts in an important case, especially when you are dealing with treason.

The CHAIRMAN. Well, of course, if you are dealing with any crime, or any particular matter that you think is important to the country, and important to the Senate, for the purpose of getting information, the facts of the matter will aid in the passing of legislation, I think that you are entitled to ask the questions necessary to get that.

Now, do you feel that you are entitled to have more leeway in an examination in a Senate committee than, we would say, you would be entitled to if you were before a court and were cross-examining a witness in court on the judiciary side of the Government?

Senator McCARTHY. You are not bound by the rules of evidence, of course, in a committee, so that there is more leeway.

The CHAIRMAN. That is with respect to that other matter.

Senator McCARTHY. I am trying to answer your question, Senator, but all I can say is this, that you, as a lawyer, would employ one method of cross-examination; Senator Johnson, Senator Stennis, Senator Case, Senator Ervin, Senator Carlson, might employ methods entirely different.

Instead of asking a short, brief question as you are inclined to do, they might ask a long question which could be considered by some as a speech, but would be considered by them as a question.

I just think it is impossible to answer that question, Senator, except to say that when you are cross-examining a witness, anything that you can legitimately and honorably do to try and induce that witness to tell the truth is legitimate cross-examination.

The CHAIRMAN. Let me give you an example.

In court, would it be proper for a cross-examiner to say to a witness that just gave him an answer to just tell him (the witness) he was lying, if he got an answer he believed to be untrue?

Senator McCARTHY. I have heard it done often in my court. I have heard lawyers saying that I think you are perjuring yourself. I am going to ask the judge to have you committed for perjury. I have heard that done.

If it is done before a jury, there is a request for a mistrial. If it is not done before a jury, it is a different situation.

The CHAIRMAN. Well, it is a very interesting subject, to me, at least, to know the views of Senators, and particularly in this case, because that is one of the charges against you with respect to your conduct, the treatment of witnesses. I have wanted to know just what your view is.

I am not asking this to be critical; I am asking it sincerely to get your point of view with respect to Senate investigations.

I know the charges are made against us that we mistreat witnesses.

Senator McCARTHY. May I say, Senator, that we try to give a witness every conceivable consideration. We give him a lot more consideration than he gets in court. For example, in a court of law, a lawyer cannot sit beside a witness and counsel with him after a question is asked—in effect, coach him. It cannot be done before a grand jury.

Before our committee, we allow every witness to have counsel, let him talk freely with his counsel regardless of whether he is a fifth amendment Communist or not. We inform him that if they want a

private room at any time to have a consultation, they can have it—something you cannot have in a court of law.

We try to, we try to give a witness every consideration. However, when you get an obstreperous witness, a witness that changes his story from page to page to page, it is entirely possible that sometimes you may get a little too impatient with him but you are trying to get the truth from him.

The CHAIRMAN. Is it not a fact that sometimes we get very provoked and we may lose our tempers?

Senator McCARTHY. I have tried not to lose mine.

The CHAIRMAN. I realize that in this matter of communism, you had this particular subject before you when you examined the witness, that there are some very, very provoking answers and attitudes and conducts on the part of those who are responding. I personally have had them shout at me and call the Senate and the country everything they could think of. I never did feel that I quite had the right to pass judgment on them right there and then. I felt I was there as a part of the Senate, an arm of the Senate to ask them questions. I did not go beyond that, but I am interested to know just how far a Senator could go under the circumstances.

I may have been wrong in my opinion. It might have been that I could say that because they refused to answer, sought the protection of the fifth amendment, that I could say right there and then that they were Communists and as good as convicted. I may have felt that way and I, at times, believe I did, but I don't believe I told them they were Communists simply because they claimed the protection of the fifth amendment.

Senator McCARTHY. I don't think I ever called them Communists; I have referred to them as fifth amendment Communists. It is an evidence, you see, of communism when you take the fifth amendment in a civil court, but, Senator, let me show you the effect of what you might call lecturing. In this case that I speak of, General Zwicker had asked me to read over, I think 3 times, 2 or 3 times, a very simple question. I said to him, "General, a 5-year-old child can understand that question; you must answer it."

That might seem like lecturing him, but he then answered it.

I might say that I tried it out on a 6-year-old child last night. I had little Virginia Thompson, who is a guest in our home—I didn't try it out; Mr. Williams tried it out here—he called her down and he read that question to her in perhaps simpler language, but in essence the same and she didn't have to have it reread. She answered instantaneously.

Well, now, some people might think that is lecturing a general when you say a 5-year-old child can understand it, but after a general says you have got to read it over, you have got to read it over, you have got to read it over, the lecture, if you can call it that, brought the answer. He didn't ask for it to be read over again.

Now, you might not approve that type of cross-examination. I don't know.

Pardon me for taking so much of your time.

The CHAIRMAN. I asked the question and you had a right to respond. I expected you to respond.

I call your attention to a question I asked you before, and that is on page 152, at the bottom of that page.

General Zwicker was replying to a long question just before, asked by you.

Let us assume that John Jones is a major in the United States Army. Let us assume that there is sworn testimony to the effect that he is part of the Communist conspiracy, has attended Communist leadership schools. Let us assume that Maj. John Jones is under oath before a committee and says, "I cannot tell you the truth about these charges because, if I did, I fear that might tend to incriminate me." Then let us say that General Smith was responsible for this man receiving an honorable discharge, knowing these facts. Do you think that General Smith should be removed from the military, or do you think he should be kept on in it?

And then the answer:

General ZWICKER. He should be by all means kept if he were acting under competent orders to separate that man.

Don't you think, Senator, in that situation that probably the general had one state of facts in mind and you had another? That seems to be indicated by his answer, and I assume that he might have had also in mind the letter he had from whoever he had it from directing him to release Peress, discharge him.

In other words, getting back to that thing, using that as an illustration, he may have felt—I don't say he did, but I assume there is some possibility he may have felt that you had in mind a man who had orders to do a certain thing, and that was probably the reason for his response.

At least, it is open to interpretation, don't you think?

Senator McCARTHY. No, Senator; let me say this, that I had the information, the official report from my investigator that the general did not feel that way, that he felt it was improper to give this man an honorable discharge—I thought the general was not telling me the truth.

You will notice after I made this statement to him which I strongly felt, he changed his position. That is cross-examination. When you have reason to know that a man is not telling the truth, you try to induce him to tell the truth. He did change his position after I made this suggestion to him.

The CHAIRMAN. I think probably you have given me your idea of how far a Senator can go in investigations under the investigative authority of the United States Senate which it has under the Constitution; so that is all the questions I have, Senator.

Are there any other questions?

Senator CASE.

Senator CASE. Not at this time.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. No.

The CHAIRMAN. Are there question from the gentlemen on this side?

Senator STENNIS. As I understand it, Mr. Chairman, all this cross-examination is deferred until all the answers are in on all the charges.

The CHAIRMAN. That is true for the staff and counsel of the committee but it is always proper for the Senators if they want to ask questions. I think Senators have the right to ask all the questions they want any time they want. It is a Senate investigation and we are

therefore in the same position as the court would be trying a case, to break in any time and ask questions of the witness.

Now, you may proceed with your further direct.

Mr. WILLIAMS. Mr. Chairman, the next case to which I will address myself is going to be quite lengthy and I might suggest at this time, if the Chair is willing, to take it up in the morning.

The CHAIRMAN. If there is no objection from the committee, we will recess until tomorrow morning at 10 o'clock.

(Whereupon, at 4:15 p. m., the hearing was recessed until Thursday, September 9, 1954, at 10 a. m.)

HEARINGS ON SENATE RESOLUTION 301

THURSDAY, SEPTEMBER 9, 1954

UNITED STATES SENATE,
SELECT COMMITTEE TO STUDY CENSURE CHARGES PURSUANT
TO SENATE ORDER ON SENATE RESOLUTION 301,
Washington, D. C.

The Select Committee met, pursuant to recess, at 10:10 a. m., in the caucus room, 318 Senate Office Building, Senator Arthur V. Watkins (chairman) presiding.

Present: Senators Watkins (chairman), Johnson (vice chairman), Carlson, Case, Stennis, and Ervin.

Also Present: Senator McCarthy; E. Wallace Chadwick, counsel to the committee; Guy G. de Furia, assistant counsel to the committee; John M. Jex, clerk of the committee; John W. Wellman, staff member; Frank Ginsburg and Ray R. McGuire, members of Senator Watkins' staff on loan to the committee; and Edward Bennett Williams, counsel to Senator McCarthy, with his associates, Agnes A. Neill and Brent Bozell.

The CHAIRMAN. The committee will be in session.

Mr. Williams, you may proceed with your examination.

TESTIMONY OF HON. JOSEPH R. MCCARTHY

Mr. WILLIAMS. Senator McCarthy, at the close of yesterday's session, Senator Watkins directed some questions at you concerning the subject of commenting upon a witness' testimony and the manner of handling an evasive witness. Mr. Justice Black, of the Supreme Court, while he was chairman of the Senate Investigations Committee, commented upon this subject. I think it might be helpful. It is only one paragraph.

The CHAIRMAN. What was that? My attention was momentarily diverted.

Mr. WILLIAMS. I ask, Mr. Chairman, because I thought it might be helpful to the committee, to have this in the record, because it is only one paragraph, about the comment of Mr. Justice Black, relative to the manner in which a chairman of a Senate committee should handle an evasive witness, a subject in which I understood we had an interest on yesterday.

The CHAIRMAN. We are interested in the Senator's own viewpoint. I think you could submit this as a part of your brief, instead of making it a part of the testimony.

Mr. WILLIAMS. It is not lengthy.

The CHAIRMAN. I realize that. It is not the length I am calling attention to, but it is a matter of examining a man as a witness, regarding his own statement. But I do not think it is proper.

Mr. WILLIAMS. I wanted to ask him, Mr. Chairman, if he is in agreement with this, because I think this sums up and expresses his views on it, as I understand it—a thing which I understood you were interested in.

The CHAIRMAN. Well, what I was interested in here was not Mr. Justice Black's views at the moment. Of course, later on, in the legal argument, we should be glad to hear what Mr. Justice Black had to say about questions of that kind.

Mr. WILLIAMS. In other words, you do not want to hear this on redirect examination?

The CHAIRMAN. I do not want to hear what Mr. Justice Black has to say—

Mr. WILLIAMS. No.

The CHAIRMAN. But I think we ought to hear what Senator McCarthy has to say.

Mr. WILLIAMS. I intended to ask the Senator whether he agreed with this as the proper procedure in handling an evasive witness.

The CHAIRMAN. It has been called to my attention that it is a leading question; but I do not object to that, because I am sure counsel is not intending to lead Senator McCarthy.

Mr. WILLIAMS. No, sir, I am not.

Senator ERVIN. Mr. Chairman—

The CHAIRMAN. Senator Ervin.

Senator ERVIN. In connection with the examination of Senator McCarthy, I may say, as an old cross-examiner myself, that I am very much intrigued by something that occurred very early in the cross-examination of General Zwicker, namely, the statement by Senator McCarthy, found on page 147.

Senator MCCARTHY. Will you hold that, until I get the file? Is it page 147?

Senator ERVIN. Yes—where the Senator made this statement to General Zwicker:

Don't be coy with me, General.

Now, I rather admired that, in a way. Personally, I would never have been bold enough to have made that observation on a cross-examination of anybody in the military service, unless perhaps it were a WAVE or a WAC, and I then would have been bold enough to do it only under romantic circumstances, where I was surrounded with soft music, moonlight, and roses; and I am satisfied I never would have been bold enough to give that admonition to either a general or a top sergeant. But I merely want to ask the Senator whether he considered that a proper method of cross-examining a general—that is, General Zwicker.

Senator MCCARTHY. I did, because he had been trying to be coy—coy and evasive. If you will note the previous question, Senator Ervin, I said:

Then, General, you knew, did you not, that he appeared before the committee and refused, on the grounds of the fifth amendment, to tell about all of his Communist activities? You knew that, did you not?

His answer was not "Yes" or "No." His answer was:

I knew everything that was in the press.

And I said:

Don't be coy with me, General.

It was the same type of evasiveness that I encountered all through my cross-examination of General Zwicker.

Senator ERVIN. Now, this is a part of the cross-examination, only.

Senator McCARTHY. Yes.

Senator ERVIN. The Senator testified yesterday that General Zwicker did not cooperate in the cross-examination. Now, I should like to ask the Senator if he thinks that this remark, asking or suggesting to the general that he not be coy, was something which he thought was calculated to encourage the general to cooperate with him in the cross-examination.

Senator McCARTHY. When you have an antagonistic witness and he refuses to answer a question, and gives you an evasive answer, you might use this language, Senator Ervin; but I asked him the simple question. I said:

Then, General, you knew, did you not, that he appeared before the committee and refused, on the grounds of the fifth amendment, to tell about all of his Communist activities? You knew that, did you not?

I was trying to find out whether he knew that; and his answer was the usual evasive answer. He said:

I knew everything that was in the press.

I said:

Now, don't be coy with me, General.

That was my system of cross-examination. You might use different language, Senator Ervin, when you have an evasive answer. That was my system of trying to pull teeth. I finally pulled some of them and got some of the information.

Senator ERVIN. That is all.

The CHAIRMAN. You may proceed, Mr. Williams.

Senator McCARTHY. What is our question, Mr. Williams?

The CHAIRMAN. I think the Chair had ruled that the excerpt from Mr. Justice Black's statement would not be inserted as part of the redirect examination because that is a matter of legal argument which, of course, I think we would be very glad to have before the committee but I don't think it would be proper to read it in. We would like the Senator to give his own views; that is what we are interested in, the testimony of the Senator himself.

Mr. WILLIAMS. Since the Chair has ruled, I will proceed immediately to charge involving solicitation of information on wrongdoing in the executive department by Senator McCarthy.

Senator, there was read into the record last week certain statements that you were alleged to have made during the Army-McCarthy hearing. I want to address your attention to a couple of these this morning and ask you about them.

Did you say, on May 27, 1954:

Mr. Chairman, in view of Senator McClellan's statements and his request, I would like to make it clear that I think that the oath which every person in this Government takes to protect and defend this country against all enemies,

foreign and domestic, that that oath towers far above any Presidential secrecy directive.

Did you say that, sir?

Senator McCARTHY. Yes.

The CHAIRMAN. Will you kindly give us the page numbers as you are calling his attention to these matters?

Mr. WILLIAMS. Page 3915.

The CHAIRMAN. Of the hearing record in the Army-McCarthy controversy?

Mr. WILLIAMS. Yes, sir.

Did you say this on May 27, 1954, at page 3918:

Again I want to compliment the individuals who have placed their oaths to defend the country against enemies, and certainly Communists are enemies, above and beyond any Presidential directive.

Did you say that, sir?

Senator McCARTHY. Yes.

Mr. WILLIAMS. On the following page, as reported on page 4260 of the Army-McCarthy hearings, did you say:

As far as I am concerned, I would like to notify those 2 million Federal employees that I feel that it is their duty to give us any information which they have about graft, corruption, communism, treason, and that there is no loyalty to a superior officer which can tower above and beyond their loyalty to their country.

Did you say that, sir?

Senator McCARTHY. I did, and may I call your attention, Mr. Williams, to the fact that I was not asking for general classified information. I was only asking for evidence of wrongdoing.

I was asking these people to conform with the criminal code which requires they give that evidence.

Mr. WILLIAMS. Did you say, Senator McCarthy, on June 16, 1954, during these same hearings—and I refer now to page 7014, addressing a remark to Senator McClellan:

Senator, may I make it very clear, so that there is no question about it, regardless of who tries to sustain me, or vice versa, while I am chairman of the committee, I will receive all the information I can get about wrongdoing in the executive branch. I will give that information to the American people.

Senator McCARTHY. As I recall, that is a correct quotation.

Mr. WILLIAMS. On that same day, making reference to a statement made by Senator Dirksen, did you say:

May I say, Senator Dirksen, I think you have raised and covered the point so well it doesn't require any answer of any kind. I personally feel that the oath which every individual takes to defend this country against all enemies, foreign or domestic, places upon him the heavy responsibility to bring to the Congress any information of wrongdoing where the matter is not being taken care of properly by his superiors.

Senator McCARTHY. Correct.

Mr. WILLIAMS. On that same day, reported at page 7022 of these hearings, did you say:

I am an authorized person to receive information in regard to any wrongdoing in the executive branch. When you say "classified documents," Mr. Symington, certainly, I am not authorized to receive anything which would divulge the names of, we will say, informants of Army Intelligence, anything which would in any way compromise their investigative technique, and that sort of thing, but as chairman of this watchdog committee, I think that is what you call it, I feel I am dutybound to receive any information about wrongdoing.

Did you say that, Senator?

Senator McCARTHY. As I recall, I did, and I would repeat it.

Mr. WILLIAMS. Did you say on that same day, speaking to Senator McClellan at page 7028 of these hearings, and I quote:

Senator, could we do this, and I don't want to pursue this any further because we are all trying to end up these hearings. can we agree that if anyone in Government knows of any wrongdoing, whether it is theft, whether it is treason, whether it is Communist infiltration, that if they come to you or if they come to me, that we will consider that they are doing their duty and that they are not guilty of any crime because the law says they have the right and the duty to do it? They take an oath of office to protect this Nation. If we could agree on that, Senator—

then you are broken off. Did you say that, sir?

Senator McCARTHY. I did.

May I say, Mr. Williams, that I recognize these quotations, and I assume that they are verbatim quotes. They certainly expressed my feelings, then; they express my feelings now.

Mr. WILLIAMS. Now, Senator, at this time, I would like to present the members of the committee and counsel with our legal position on this matter which we shall develop throughout the morning in the form of a brief.

I think that will help the committee in following the course of the testimony so that you will have certain of these matters before you.

The CHAIRMAN. Did you desire to present the outline of it orally?

Mr. WILLIAMS. I think we can cover it here, sir, during the testimony. I think that is the most effective way for the committee to follow it because this states Senator McCarthy's position on this matter, which is the defense of this case.

Now, in the charges that have been filed against you, Senator McCarthy, in the second category, the Fulbright amendment states, in part, that you invited and urged employees of the Government to violate their oath of office.

The Morse amendment states, in part, that you invited and incited employees to violate their oaths of office.

And the Flanders amendment states, in part, that you incited employees to violate their oaths of office.

Now, I would ask you, Senator, if you know what the oath of office is that a Federal employee takes upon entering the service of his country.

Senator McCARTHY. First, let me say that the charge that I invited them to violate their oaths of office is completely false. It has no basis in fact whatsoever.

They are being invited to conform to their oaths of office and to conform to the Criminal Code.

I thought they made the oaths:

I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same, that I take this obligation freely without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

And may I say, Mr. Williams, when I asked Federal employees to give the chairman of the "watchdog committee," the committee set up by the Reorganization Act, to disclose wrongdoing in the Government, when I invited them to give the chairman of that committee evidence of

wrongdoing, I am inviting them not to violate their oath of office but to conform to their oath of office.

Also, may I say, Mr. Williams, there is a Federal law which makes it a crime to——

Mr. WILLIAMS. I will come to that in just a moment, Senator.

Senator McCARTHY. Pardon me.

Mr. WILLIAMS. I am interested now in the question of whether there was an invitation to Federal employees to violate their oaths of office which they take on entering the service.

Senator McCARTHY. The answer to that is no.

Mr. WILLIAMS. Now, in the charges as specified by Senators Fulbright, Morse, and Flanders, in addition to the allegation that you urged employees to violate their oaths of office, there is the companion allegation, and I shall refer to these charges themselves, that you urged them to violate the law, as Senator Fulbright put it; and as Senator Morse put it, openly invited and incited employees to violate the law; and as Senator Flanders put it, to violate their oaths. Senator Flanders made no reference to a violation of the law.

But there are two references; one by Senator Fulbright and one by Senator Morse in which you are charged with urging employees to violate the law.

Now, Senator, are you familiar, sir, with the United States Code, title V, section 652 (d) and its provisions, and were you familiar with it at the time you made the statements that I have quoted to you earlier this morning?

Senator McCARTHY. I am and I was.

Mr. WILLIAMS. What is that provision to which I have just referred?

Senator McCARTHY. May I read it to you, Mr. Williams? It reads:

The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress or any Member thereof, or to furnish information to either House of Congress, or to any committee or Member thereof, shall not be denied or interfered with.

May I say that as I recall, this law was introduced by my predecessor Bob La Follette, Sr., and passed, I believe in 1912, reenacted in 1948 after the Truman secrecy order.

Mr. WILLIAMS. The fact is, is it not, Senator, that Congress reenacted this statute 4 months after the secrecy directive of President Truman?

Senator McCARTHY. I wouldn't know the length of time, but I understand it was reenacted after Truman's secrecy order, which certainly would negate his order.

Mr. WILLIAMS. In what respect?

Senator McCARTHY. Well, that there is nothing in the courts or nothing in statute law to give the President the power to permit employees to give information on wrongdoing or graft, corruption, or treason to Congress.

The CHAIRMAN. Mr. Williams, I realize it is difficult for you to present the views of Senator McCarthy without getting into argument. The witness should testify to the facts, which I hope will be rather liberal, with the approval of the committee, as long as you do not get off into a complete argument and nothing else.

If there are various items in it as a matter of aiding the committee, we will allow you to go on, but I want to call attention to the fact that

I do not think it is quite within the field of testimony. It is largely an argument. But you may proceed.

Mr. WILLIAMS. I might say, Senator, there is no other way in which to put a defense in against this charge. Senator McCarthy is charged with being in a wrong position on the law, and urging that position on others. We do not take the position, and we are not here to deny the position that was taken, and we can show what the law is, in our opinion, and there is no other way to defend this than in this manner.

The CHAIRMAN. I think it could be defended by argument by his lawyer. At the present time he is sworn to testify, and largely it would be on factual matters.

I want to call it to your attention that we do not necessarily agree that it is the proper kind of testimony, but since we will have to listen to the argument sometime or other, we might as well have that mixed in with the facts to which he testifies. So you might as well proceed.

Senator MCCARTHY. I would say I think it is necessary to have the committee know what my interpretation of the law was when I made these statements with respect to wrongdoing.

Mr. WILLIAMS. Now, this statute to which we have just made reference sets out, as you understand it, I take it, the right of employees to give information to members of the legislative branch regarding the executive branch.

Senator MCCARTHY. Right.

Mr. WILLIAMS. As I understand your testimony, Senator, your solicitation is for information, so that we will have your position clear, and that was confined to a solicitation of information on graft, corruption, communism, wrongdoing in the executive; is that correct?

Senator MCCARTHY. I confined this information with regard to illegal activities on the part of Federal employees. It did not include general classified material.

In other words, I was not asking them for atomic bomb secrets or any of our military secrets. I was merely asking for information of illegal activities and I may say, Mr. Williams, that as chairman of the Government Operations Committee and the Investigations Committee, if I did not try to get that information, then I should be subject to censure.

Mr. WILLIAMS. Now, in addition to the right of employees to give information to Members of Congress as spelled out in this and other statutes to which we shall refer, was it your conception, Senator, and is it now, that there is a duty on their part to give such information?

Senator MCCARTHY. The law so provides.

Mr. WILLIAMS. What law do you have reference to?

Senator MCCARTHY. Section 4 of the United States Code. May I quote that to you, Mr. Williams?

Mr. WILLIAMS. Yes.

Senator MCCARTHY. It states:

Whoever, having knowledge of the actual commission of a felony, cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than \$500 or imprisoned not more than three years, or both.

I was advising them to conform to the Criminal Code.

Mr. WILLIAMS. Now this statute, Senator, says that it is the duty of citizens to bring forward this information and make it known to some judge or other person in civil or military authority. Did you conceive yourself to be, and do you, sir, one within the category "civil authority"?

Senator McCARTHY. Yes, the Supreme Court has so held.

Mr. WILLIAMS. Would you tell the committee in what case that was and we will not go into the details of it?

Senator McCARTHY. In the case of *Lamar v. U. S.* (241 U. S. 102), in which it was held that a Senator was a person in "civil authority".

I could read the code but I think the Senators all have the code before them, on page 4 of the brief which we have submitted, and I doubt whether it is necessary to burden them with reading the quotation.

Mr. WILLIAMS. Now, in that case the Supreme Court was construing a statute comparable to the one about which we are talking?

Senator McCARTHY. That is correct.

Mr. WILLIAMS. So that because of title XVIII, section 4, and the case of *Lamar* against the United States, Supreme Court case, you felt and you feel that where there is evidence of wrongful conduct, criminal conduct, it is the duty of persons in the executive to come forward to someone within the scope of his statute, the judge, or someone else in civil or military authority?

Senator McCARTHY. Mr. Williams, I feel very strongly that if someone in the executive knows of wrongdoing, of a crime being committed, and they do not bring it to someone who will act on it, they are almost equally guilty.

May I go further and say it would be impossible for me as chairman of the investigating committee, set up under the Reorganization Act, to do my work, it would be impossible to dig out and expose wrongdoing unless loyal Federal employees came forward—and let me emphasize again I am not asking for general classified information; I am merely asking for evidence of wrongdoing.

I maintain that you cannot hide wrongdoing, that the head of a department cannot hide wrongdoing by using a rubber stamp, stamping "Confidential," "Secret," or "Top Secret"—I don't care what classification they stamp upon it—as long as it is evidence of wrongdoing.

Mr. WILLIAMS. Now, at the time that you urged Federal employees to come forward with information on graft, corruption, communism, or treason, you were then serving as chairman of the Government Operations Committee; were you not?

Senator McCARTHY. That is correct.

Mr. WILLIAMS. And you were serving as chairman of the subsidiary committee, the Committee on Permanent Investigations?

Senator McCARTHY. That is right.

Mr. WILLIAMS. Over and above your status as a Senator, did you, by virtue of those assignments, have a more particular status in relation to this information?

Senator McCARTHY. A status and a duty, very important duty, Mr. Williams, one that was assigned to me by the Senate unanimously.

Mr. WILLIAMS. Now, we have shown what the right of employees is to go to Members of Congress and we have shown the scope of their

duty in that respect to take evidence of wrongdoing to someone in authority.

Did the Legislative Reorganization Act of 1946 impose a particular duty upon you and members of your committee?

Senator McCARTHY. It did, and you will find that set forth on page 6 of a compilation of the Legislative Reorganization Act of 1946.

Mr. WILLIAMS. You are reading from, I take it, section 102-G?

Senator McCARTHY. Yes, and may I just read very briefly.

One of the duties of our committee is "studying the operation of Government activities at all levels, with a view to determining its economy and efficiency," and, obviously, if security officers are allowing Communists to hold important positions, they are not efficient.

Mr. WILLIAMS. Now, Senator, when you took the position which you did, in fact, take, and which Mr. Chadwick has offered evidence on and which we have corroborated here this morning, was that a new position in the history of the Senate? Was it an unprecedented position by the chairman of a Senate committee?

Senator McCARTHY. No. It is not new or unprecedented. In fact, the Vice President took a position much stronger than the one I took.

Mr. WILLIAMS. Before we get to that, I want to ask you in particular about the chairman of the committee which was in all respects identical with the committee of which you are chairman now, back in 1934, Senator Hugo Black, chairman of the Government Investigations Committee then.

I want to ask you what position he took in the munitions investigation of that year.

Senator McCARTHY. I would like to quote him, if I may, Mr. Williams. He said:

In the munitions investigation something new was tried. A munitions manufacturer said its correspondence in many cases referred to Government munitions business and that this was confidential to the Government. It produced its papers under compulsion, but all over every document was "Confidential by Order of the War Department." Needless to say, the committee paid no attention to this stamp.

I might say that because Hugo Black paid no attention to that phony stamp he exposed much wrongdoing and did a great job for the country at that time.

Mr. WILLIAMS. That was in 1934?

Senator McCARTHY. That is correct.

Mr. WILLIAMS. Now, I want to ask you, sir, about the chairman of another committee. I want to ask you about Senator John Williams, of Delaware, who exposed fraud and corruption in the Bureau of Internal Revenue. I ask you whether or not he has expressed himself on this very subject—

The CHAIRMAN. Just a moment, Mr. Williams.

Mr. WILLIAMS. Which is before this committee.

The CHAIRMAN. Before he answers, I think that is getting out of the line of legal argument.

Mr. WILLIAMS. I think, Mr. Chairman—

The CHAIRMAN. That would be hearsay.

Mr. WILLIAMS. I feel most strongly on this, sir. There is a motion pending in this Senate, before this committee, to censure Senator McCarthy for making certain statements.

Now, certainly we should be able to show that other men who sit in the United States Senate today, who have sat there before, have taken the identical position, to show that the position he has taken is not unprecedented and that it is an expression of a solid constitutional position, and that is the only way we can put our defense in, sir.

The CHAIRMAN. I think you are probably belaboring the point a little too much for the simple reason we are not here now investigating Senator Williams or Senator Williams' views.

We are willing to listen to the law on this matter. The committee knows, of course, a widespread discussion of this has been a controversy for many years, as to what Congress should get and what the executive department is willing to give.

Let's confine it not to the matters other Senators have done, because we are not investigating those charges.

We could go off into the bypaths here for hours and days if you wanted to go into all of these things that Senators have done in the past.

Now, there were no charges filed; no controversy arose with respect to that particular thing. Whether it was objected to or not, we don't know; but, at any rate, we are getting off into a side field.

I think you are perfectly in order, in accordance with the ruling made a moment ago, to go along the line of the law on this question, but just because somebody else did some of these things is no indication it was always right.

Mr. WILLIAMS. Mr. Chairman, may I say, sir, first of all, we are going to show that Senator McCarthy knew of these things, that his position was in all respects parallel with the expressions of opinion of these Senators and that, therefore, when he expressed his opinion, he was expressing an opinion which he believed represented the views and opinions of other chairmen of other committees, including his own.

I may say to you, Senator, we listened for 3 days when the evidence went in on these charges. Now, we have had only 1 day.

The CHAIRMAN. We are not going to cut you down on time.

Mr. WILLIAMS. We are not trying to take time, but I think it is imperative that we have an opportunity to be heard on these charges and a ruling of this kind forecloses a fair opportunity to be heard, Mr. Chairman, and I respectfully urge you to allow us to go forward and show these precedents; otherwise, we just can't put this defense in.

Mr. Chairman. I tried to make legal argument the first day, and was not permitted to do it.

The CHAIRMAN. You have been given the right to file a brief, and we also told you before we concluded this hearing that you could make an oral argument.

Now, you are having a witness testify and he is attempting to testify as to what Senator Williams did, and then you might go on with Senator Jones and Senator Brown and Senator Smith, and go on down the line for I don't know how many years back, clear to the beginning of the history of the Senate.

We think that is not quite a proper subject for testimony.

This committee is made up of men who are in the Senate. We have to take judicial notice of what Senator Williams and all these others

have done. We do take judicial notice of the fact that there has been a Congress and some of this information has come in that way.

So, I do not see how you could claim this to be a part of the testimony on Senator McCarthy.

Mr. WILLIAMS. I do claim it is part of the testimony, Mr. Chairman, and I think it is the most relevant part of the testimony with respect to this charge because the proposition that is before this committee is whether or not Senator McCarthy did wrong; whether he did a willful and intentional wrong in his statements that have been quoted here this morning.

Now, certainly, we are entitled to show that he was acting on precedent, long-established precedent, and that he believed that what he said was the law and that he had reason to believe that, as a result of the precedents of the Senate.

The CHAIRMAN. You can see, can't you, that if we start on individual Senators' activities and records, we would have to bring them in to see whether they did get any of this type of information from executive departments.

We are going to side issues that I don't think will be helpful to the committee because the matters with respect to what Senators have done, at least they brought matters to the attention of the Senate, is well known to the Senate. It is well known to this committee. We take judicial notice of that. But how they get that information is not so well known, and I don't know that Senator McCarthy can testify personally to how they get it.

Mr. WILLIAMS. Mr. Chairman, Senator McCarthy is being tried for violating the rules of the Senate. Now, all I am trying to show is what the practice of the Senate was and I cannot conceive of the fact that we should be stopped on this kind of a showing.

The CHAIRMAN. I think it is improper testimony to go into these matters, what other Senators have done. There has been no question raised on those Senators.

Mr. WILLIAMS. I know that, and that is the heart of our defense.

The CHAIRMAN. That is all right. We are not investigating them. We cannot go into all these bypaths and all these diversions.

Mr. WILLIAMS. This is not a diversion, sir. This goes to the very heart of this defense, and I urge you to listen to this testimony, and if you won't listen to it in the form of testimony, then I ask for the right to be heard in argument on this.

The CHAIRMAN. I have made my ruling. We will allow you to make an argument, yes, but I don't think this is proper testimony. It is hearsay. I think the Senator well knows I am willing to let him go ahead on the law, but when we get into individual Senators' conduct, that is another matter entirely because we will have to find out if you are going to use that as a precedent, how they got that information. There isn't anything in the record before us that would indicate they got any of their material illegally or by solicitation or involved anybody giving out classified information. I say you are getting out into a lot of diversions. We don't intend to do that.

Now, I don't think you are aiding to cite the other precedents of what other Senators have done over the years, whether they are right or wrong in what they did; whether they have been challenged or not is, I think, somewhat beside the point.

MR. WILLIAMS. I want to say to you, Senator, that this ruling from the Chair—and I say this most respectfully to the Chair—this ruling effectively prevents us from putting in a defense to this case because I have been stopped from showing what was in Senator McCarthy's mind when he made these statements, and that is part of the charge here, that he was acting in a manner that was willfully wrong, that was in the teeth of precedent and in the teeth of the law when he made this charge, and now I have been stopped from showing what was in his mind.

THE CHAIRMAN. You can quarrel with the decision if you want to, but we are not going to take the time to quarrel with you. That is the ruling. I call your attention, also, that in this memo you submitted to us, what you are saying about what Senator Williams said about it was not said in the Senate at all but was said in an interview with the United States News and World Report.

SENATOR MCCARTHY. Mr. Chairman, may I have 30 seconds?

THE CHAIRMAN. This committee—let me make myself clear on this matter—this committee has been given a special job to do; it had to set up special rules. Now, when you get into this subject, Mr. Williams, all of these matters you are talking about can be reviewed before the Senate itself, for the simple reason that you don't have to be confined to material or relevant matter. You can talk to anything you want to talk to when you have the floor as long as you don't violate the rules, and there is no rule against immaterial or irrelevant matter. But we have had to set up certain rules here, and we don't intend to go into this question of finding out what each Senator has done in his individual capacity. The official actions of the Senate are another matter; so I think the ruling is clear, and I will stand on it.

SENATOR MCCARTHY. Mr. Chairman, may I have 30 seconds?

THE CHAIRMAN. We have a rule, Senator. I called it to your attention the other day, that only you or your counsel might argue the matters, not both of you. Your counsel has made your—

SENATOR MCCARTHY. May I beg your indulgence, because that is awfully important to us.

THE CHAIRMAN. I will give you the 30 seconds, even if it is in violation of the rule.

SENATOR MCCARTHY. Mr. Chairman, I am charged with violating the rules and the precedents of the Senate. I think it is extremely important for me to show what the precedent has been, and show that I was entitled to rely upon what eminent Senators, chairmen of committees, had urged Government employees to do, that there was nothing different in what I did from what the other chairmen of committees did, not different from what the Vice President did, and in fact, the Vice President went much further than I did. I think it is important for this committee to know whether or not I was establishing a new practice, and I do wish the Chair would consult with the members of the committee before he rules on this extremely important subject, because I feel, Mr. Chairman, I feel strongly, that unless I can show that I knew what the precedent was, that I knew it had never been questioned, I knew it had been relied upon by the Senate, approved by the Senate, that I was following that approved practice; unless I can do that, I think I am precluded from submitting the defense, and I wish the Chair would, because this is so all-important

to me, I wish the Chair would just go in a huddle with the other Senators so we will know this is a decision of the Senate as a whole. I have great respect for the Chair. I know he is trying to rule fairly. I know he is trying to expedite these hearings, but I hope he doesn't expedite them at the expense of our being able to present a defense.

The CHAIRMAN. As stated in the beginning of this matter, this hearing, the Chair did state that if there were any rulings made by the Chair that were questionable, the committee in executive session would consider those matters and if the Chair was in error, he would reverse the ruling.

Now, I have not had an opportunity, and I don't want to have an executive session right at this moment, but I have permitted you—if you will go back in the record, you have been permitted to go along with the chairmen of the committees and the Vice President, but when you get over to Senator Williams who was never a chairman of a committee and is not now the chairman of a committee, it is another matter, and getting out into the individual conduct of various Senators.

We could go on for months here.

Mr. WILLIAMS. We are not going on for months.

The CHAIRMAN. But if I open that door and permit that type of testimony, we could be going on and on, and there is some question, the same question would come back as to whether they had been doing the right thing or not. I want to make the position clear that I am thinking about: The members of this committee recognize, just as you do, and Senator McCarthy does, that there has been a controversy over the years; that is one of the things that will have to be settled eventually by the Senate itself.

We are trying to take as much testimony that would throw light on those matters as we can within the limited time that we have. You are in the field almost entirely of argument—Senators so-and-so and so-and-so did this—and you might say that to get all the truth, all the facts connected with it with respect to Senator Williams, we would have to call in Senator Williams. Senator Williams, did you, or did you not, get information from sources that might be objectionable or within the field of the Executive?

We would have to go into whether or not he did what Senator McCarthy claims he did. Senator McCarthy obviously cannot testify as to what Senator Williams did and what he said in an interview is only hearsay evidence. That is the hearsay ruling. And I have permitted you to go on with an argument here and I have not objected to where you have called the attention of the committee to the action of the chairmen of committees. Going on into the field of individual Senators is quite a different thing, I think, at least in degree.

You cannot try all these matters, to find out whether each individual Senator did the same thing that Senator McCarthy thinks he did, and something that he has followed.

Senator CASE. Mr. Chairman—

The CHAIRMAN. Senator Case.

Senator CASE. Mr. Chairman, I think it is obvious that, with the number of Senators that there have been and the number of points that you have taken, it would be possible to find some Senator who had expressed himself in various ways on practically every subject. I think the committee could be interested in any actual precedent of

action by the Senate on the thing. I do not regard the statement of a Senator as a precedent. It would be the adoption of a resolution by the Senate or some formal ruling by the Senate in some respect. If the witness has any actual precedents of the Senate, any decisions in the matter, I think those would be helpful to the committee.

Mr. WILLIAMS. Mr. Chairman, in light of the ruling here, I should like to request a 10-minute recess, to permit me to confer with Senator McCarthy.

The CHAIRMAN. All right. We will take a 10-minute recess. In the meantime, the committee will endeavor to confer here—if they will leave us alone—at the table.

(Whereupon, at 11:02 a. m., a 21-minute recess was taken.)

The CHAIRMAN. The committee will resume sessions.

The committee met in a brief executive session and they have unanimously upheld the decision of the Chair.

I may say now, so that there will not be any misunderstanding of it, that the Chair attempted to be as liberal under the rules adopted for this proceeding as he felt he could be, and still keep to the main purpose of this investigation.

The Chair permitted the argument on law to follow in connection with the testimony. I think that would probably aid the committee.

Now, we get into the field of individual Senators' activities and use that as an argument for precedence. The Chair had permitted the statement of Justice Black and the statement was made that was supposed to have been made by Vice President Nixon. I did not catch it at the time, but I believe it was a statement made by him at the time he was a Member of the House of Representatives rather than while he was Vice President.

The Chair and the committee will permit precedents, actions of the Senate, or any official group within the Senate. It will take judicial notice of those activities, and I have gone so far as to permit the statement of chairmen of various committees of the Senate made in connection with their official activities on any given matter, and that will be permitted now, but as we see it it would be an endless job to permit the consideration of the actions of individual Senators because we know as a matter of experience that you can find some precedent for almost anything under the sun when it comes to statements and activities of Senators and Congressmen.

They have talked on many subjects, and you will find speeches on both sides of the question as to whether or not it is proper to solicit the contributions or the statements from people in the executive department and, also, you will find statements probably on both sides as to whether the chairman of a committee would have the right to certain information, whether he was authorized as a person to have that right.

We have 96 Senators, and sometimes we have 96 different views, and so we feel that that is going too far into what individual Senators have done. But within limitations that I have mentioned, I will allow you to proceed.

Mr. WILLIAMS. Mr. Chairman, I am deeply sorry that the committee has taken this view of our evidence. I think candor dictates that I say to you, sir, that I am shocked at this ruling. I must also say that—

The CHAIRMAN. We have made the ruling. Of course, if you want to criticize the committee, why——

Mr. WILLIAMS. I certainly have no desire in any way to criticize the members of this committee, but I do say again to you, sir, candor dictates that I say that I am shocked by the ruling.

The CHAIRMAN. The record will show your statement.

Mr. WILLIAMS. I must also say to you that the ruling of the Chair effectively prevents us from introducing the evidence which we believe constitutes the very heart and soul of our defense on the charges with respect to solicitation, on the charges with respect to the FBI letter.

I must say to you, Mr. Chairman, why that is.

The CHAIRMAN. Do you want to reargue it?

Mr. WILLIAMS. No, sir, I do not want to reargue it, but I want to tell you, sir, why we cannot go forward with our defense to these charges.

Senator McCarthy is being charged with wrongful conduct, conduct that is against the precedents of the Senate, that he has done something that other Senators have not done.

We were prepared to show, and we have not shown in this brief that we submitted, and I say it is a most ineffective instrument insofar as presenting the sole side of our case, because we cannot present Senator McCarthy's mind in the form of a brief. What we had expected to show was that the chief policy-making Members of the Senate had taken the exact position, the Vice President of the United States, the chairman of the Republican Policy Committee, you, yourself, Senator Watkins, have taken the exact position that was taken here, and unless we can show that the leaders of the Senate, the leaders of the Senate have taken——

The CHAIRMAN. You are not referring to me as a leader of the Senate, I hope.

Mr. WILLIAMS. Yes, I am, Mr. Chairman.

The CHAIRMAN. I disclaim any such responsibility. However, I thank you for the compliment.

Mr. WILLIAMS. But unless we can show that the leaders of the Senate have taken precisely the same position time and time again and that Senator McCarthy knew this, which he did, and that he was acting in complete compliance with Senate precedent, which he was——

The CHAIRMAN. Well, you can show that, and Senate precedent is shown by the official actions of the Senate or its committees. You cannot go around and call the roll of all the Senators.

It seems to me the precedent is very clear. In a courtroom, if a defendant sought to prove in a case in which he probably is charged with stealing a pig that somebody else, one of his other neighbors stole a cow or a horse, that would be incompetent hearsay, and would have nothing to do with the issue in the matter.

Mr. WILLIAMS. May I ask your indulgence this far, Mr. Chairman. I realize that the Chair has ruled, and I am not asking the Chair or the committee to reopen this thing at all.

The CHAIRMAN. Well, then, your remarks, if you are not asking that, are immaterial at this time.

Mr. WILLIAMS. I think they are not, sir, because I want to lay in this record our position.

The CHAIRMAN. Just a moment. Let us do it in an orderly way. If you are not going to reargue this thing, I do not know what is before this committee at this time. We made the ruling, and you are not asking to reargue it, and I think your remarks would be out of place at this time.

Mr. WILLIAMS. Mr. Chairman, it may be that the full Senate will disagree with the ruling of this committee.

The CHAIRMAN. That is perfectly possible they will do so.

Mr. WILLIAMS. And unless I can state, sir, why we cannot put our defense in, then there is nothing in this record on this subject.

The CHAIRMAN. You have already said so.

Mr. WILLIAMS. I have not completed my remarks, sir. You stopped me before I had finished.

I asked simply for the right to state for this record why we cannot go forward at this time. May I have that right, sir?

The CHAIRMAN. Keep within the rules established for this hearing, and you may proceed. If you want to state a position why you cannot go forward with your defense—

Mr. WILLIAMS. We cannot on the second count, which is the solicitation count, because our whole defense turns around the fact that this has been the unbroken precedent of the Senate for many years, as illustrated by the expressions of those men who have sat in the Senate.

We cannot go forward with regard to our defense on the FBI letter, because one of the most important parts of our case was a showing of what action Congress had taken in an almost identical situation in 1948.

The CHAIRMAN. You mean the Congress itself?

Do not be misleading.

If the Congress took that action, the ruling is that you can go ahead and show it.

Mr. WILLIAMS. Mr. Chairman, I am not being misleading.

The CHAIRMAN. You say that the Congress itself did it. If they did that, Mr. Williams, you can put that into the record.

I do not want the position of the committee to be misrepresented, even inadvertently.

Mr. WILLIAMS. I wonder if I may—

The CHAIRMAN. You may proceed, but I am going to stop you if I think you are misrepresenting the position of the committee.

Mr. WILLIAMS. We were prepared to show that in 1948, April 22, Vice President Nixon, then Congressman Nixon, spoke about a letter, an FBI letter, that he, as a member of the House Un-American Activities Committee, had knowledge of, which had been received and which was not the full context of the letter, an FBI letter on the security of one of the projects in which security regulations applied, a letter relating to one Dr. Condon.

We are prepared to show that letter was received, that it was introduced into a record of the House of Representatives, namely, a report of the House Un-American Activities Committee, and that thereafter, when the charge was made that that letter was not the full and complete text of the FBI letter, Congressman Nixon asked the House to secure that letter from the Federal Bureau of Investigation, and when the argument was made that that was in the teeth of the secrecy order

of President Truman, Mr. Nixon made a very vigorous statement on the floor of the House that that secrecy order was unconstitutional.

I say, sir, that that becomes very important as one of the precedents which we wanted to call to the attention of the committee.

The CHAIRMAN. Was there an action of the House on that matter that was brought before it by Mr. Nixon?

Mr. WILLIAMS. There was no action of the House, Mr. Chairman, on Mr. Nixon's expression that the secrecy directives were unconstitutional; but the House of Representatives, by a unanimous vote, passed a resolution asking for the letter from the FBI on which the charge centered, the charge having been that the House committee had gotten the letter through illegal channels.

The CHAIRMAN. All right. You can bring in legal action of the House on that matter as a precedent. However, it doesn't control the Senate, as you know; but at the same time we will take it for whatever its weight is, whatever weight it has in connection with this matter here; but just to take the speech of Mr. Nixon will not be enough.

We don't feel the speech of Mr. Nixon on that matter is relevant testimony here in this case. It is completely hearsay.

Mr. WILLIAMS. I understand that, sir.

The CHAIRMAN. But we will take judicial notice of the actions of the House and the Senate and of its component parts, the committees.

Mr. WILLIAMS. I understand.

The CHAIRMAN. And I have allowed you to go as far as to take the statements of the chairmen acting in accordance with their official positions as chairmen.

It seems to me that is enough.

Mr. WILLIAMS. I understand the ruling of the Chair is we may not offer in evidence here what other Senators and other Congressmen have said on this subject—

The CHAIRMAN. That is right.

Mr. WILLIAMS. For which Senator McCarthy is being censured. We may not do that.

The CHAIRMAN. That is right, because they are not under charges here.

We are not going to investigate the remarks of every fellow, every Member of the Senate and the House, pro and con, on these various matters.

We take judicial notice of the fact there is hardly anything that comes before either the House or the Senate that you don't have very strong views on by proponents and opponents.

Mr. WILLIAMS. Our position, Mr. Chairman, is that Senator McCarthy, as a member of the Senate, knew of the positions that had theretofore been taken. There had never been any effort by anyone to censure any of those men for the positions they took and expressed on and off the floor of the Senate on this very subject, many times in much stronger language than Senator McCarthy, many times holding that the directives were not constitutional and that the whole classification system was unconstitutional; and I am referring now to the chairman of the Republican policy committee, who took that same position.

Now, we think we should be able to show that as part of our defense, because if Senator McCarthy knew of these precedents and he was simply following what the leadership of the Senate had done,

certainly no one would argue that he should be censured, if the statement I made be true, and we ask the right to show that it is true, but your ruling has precluded that and, therefore, we can't go forward with our defense on the second or third count of these charges.

The CHAIRMAN. You are then ready for cross-examination on what has been presented?

Mr. WILLIAMS. Well, you can't cross-examine nothing, I guess, Mr. Chairman. We haven't been able to offer anything but a couple of statutes.

The CHAIRMAN. Oh, we have had the testimony with respect to General Zwicker and the general statements made. We have been here now for a long time.

Mr. WILLIAMS. Apparently you misunderstood me, Senator. I did not say at any time we were not going to present evidence on charges that had no bearing to your ruling. We are not taking an arbitrary position such as that.

The CHAIRMAN. I am glad you clarified that because you left it somewhat in doubt.

Mr. WILLIAMS. I don't think it was in doubt, sir. I said with respect to the second and third category charges.

The CHAIRMAN. I accept that explanation, but I will say now on the testimony already given, if you are going to try to go any further, in view of the committee's ruling, all that has been presented up to this point by Senator McCarthy in his testimony will be open to cross-examination.

Mr. WILLIAMS. We do not decline to go further. We can't go further, sir.

We want to go further, but we cannot go further, in the light of your ruling.

The CHAIRMAN. Of course, if we rule that certain evidence is not admissible, you cannot bring it in; and if that is your case, we have ruled you cannot bring in individual views and statements and activities of individual Senators or Congressmen.

Mr. WILLIAMS. Now, Mr. Chairman, we had expected——

The CHAIRMAN. Now, you may proceed, then, with your next category. I think we have argued this enough. You have made your general offer, which I think is sufficient.

Mr. WILLIAMS. We had expected, Mr. Chairman, to take up the morning and complete both the second and third cases by 12:30 and complete the last two cases this afternoon early.

So, we weren't going to burden the committee by taking much time. We were going to be finished by 12:30; but in the light of the ruling we are not prepared to go forward on the next two charges.

Because we had set those up for this afternoon, I would ask you to recess at this time.

The CHAIRMAN. We will recess——

Senator CASE. Just a moment, Mr. Chairman.

The CHAIRMAN. Just a moment.

Senator CASE. Before the Chair rules on that, I should like to ask the Chair if, under his ruling, testimony would be permissible which is, in effect, the statement adopted by the so-called Internal Security Subcommittee of the Committee on the Judiciary and then adopted by the full committee, if it bore upon this question of inviting information or getting information from Federal employees.

The CHAIRMAN. I think it is obvious that it would be permissible to take the action of any of the subdivisions of the Senate, official subdivisions, committees, or subcommittees.

Senator STENNIS. Were you through?

Senator CASE. I will yield to the Senator from Mississippi.

Senator STENNIS. No, not unless you are through.

Senator CASE. Then, Mr. Chairman, I do not understand the statement of counsel that he could not proceed with the expression of what he intended to do in view of his earlier statement that he intended to present such a statement and now declines to do so.

The CHAIRMAN. Are you calling attention to the memo that was submitted?

Mr. WILLIAMS. Senator Case, I will be glad to outline for you, sir, right now what evidence we were going to put in, if you want to hear it.

The CHAIRMAN. I would say, the chairman of the committee making his ruling, that if we are not going to permit it, the Senator to argue it, I don't see any reason we should permit you. It is still immaterial if you are going to bring in these other matters and argue it.

Make your offer of proof in a general way without going into all the details.

Mr. WILLIAMS. I understand the ruling: neither Senator McCarthy nor I may present argument on these.

The CHAIRMAN. You can argue at the proper time, but we are not going to break into the taking of testimony to make the argument on each one of these proffers.

Mr. WILLIAMS. I thought the Chair said I could not argue these precedents.

The CHAIRMAN. These individual precedents, no. I have given you time to argue about the individual precedents, but I am not going to permit you to go in and recite each one, the details, at least.

Senator STENNIS. Mr. Chairman, while you were ruling here, and during the colloquy back and forth expressed by Mr. Williams, Mr. Williams seemed to emphasize the things he could not do, and he is concerned about that, I am sure; but I just jotted down here the ruling of the Chair as I understood it, of the things that will be permitted to be put in evidence, and of course that includes any law that might have any bearing on the subject, or any rule of the Senate, or, I suppose, of the House either.

The CHAIRMAN. It does not have the same weight.

Senator STENNIS. If it is pertinent to the subject matter, but also anything in reference to action by the Senator or the House, or anything that is pertinent here, in the form of a policy of the committee or the actions of a committee or a subcommittee.

Mr. WILLIAMS. Senator—

Senator STENNIS. May I see here if I correctly understood the outline of the ruling. As I understand, what is ruled out is merely the statements of individual Senators or Members of the Congress.

The CHAIRMAN. Or their actions.

Senator STENNIS. Or their actions.

Mr. WILLIAMS. Senator, why my hands are tied, I may say, is that there was no formal action taken by the Senate because the Senate never attempted to censure any of these many other people who made

these statements, so that there was no formal action on their statements.

Senator STENNIS. I was merely trying to clarify the ruling, and as I understand the chairman, he admitted statements of a subcommittee chairman, the former Senator Black.

The CHAIRMAN. In his official capacity.

Senator STENNIS. In his official capacity, comparable to that of Senator McCarthy. Those and like matters would be admitted, as I understand from the Chair.

The CHAIRMAN. I think that is pretty clear from what I said, and I repeat it here several times. Then you may proceed with whatever category you are ready to take up next at 2 o'clock this afternoon.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. The committee will be in recess until 2 p. m.

(Whereupon, at 11:45 a. m., the hearing was recessed until 2 p. m., the same day.)

AFTERNOON SESSION

Thereupon, at 2:10 p. m., the committee reconvened.

The CHAIRMAN. The committee will now be in session.

Mr. Williams, you may proceed with your presentation of evidence. Photographers will kindly leave the room.

TESTIMONY OF HON. JOSEPH R. McCARTHY

Mr. WILLIAMS. Mr. Chairman, I should like, if I may, to now submit to the committee our brief on our point of law, which was raised on the first day, namely, the propriety of going into conduct that antedated the present Congress, and looking toward a censure move. I have prepared a written brief on this, and I would like to present it for the committee's consideration.

The CHAIRMAN. Thank you, Mr. Williams. It will be received and distributed to members, and will be printed at an appropriate place in the record.

Mr. WILLIAMS. I have also, Mr. Chairman, at this time, another brief regarding the Gillette committee, and the resolution under which it was operating, which I should like to submit to the committee's consideration at this time, since we are going into that phase of the matter.

The CHAIRMAN. That is still on the first category?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Both of these briefs are on the first category?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. That may be received. We will have an attendant, please, take the briefs and distribute them.

Mr. WILLIAMS. I would now like, sir, to go into the oral testimony.

The CHAIRMAN. You may proceed.

Mr. WILLIAMS. Senator McCarthy, I direct your attention to Senate Resolution 187, of the 82d Congress, which has already been introduced into evidence in this proceeding, and ask you, sir, if you were aware, when you were corresponding back and forth with the Subcommittee on Privileges and Elections of the 82d Congress, of the scope of this resolution, under which that committee was purporting to operate?

Senator McCARTHY. Very fully so.

Mr. WILLIAMS. And would you tell the committee, for the purpose of the record, what the scope of that resolution was, with respect to its powers of investigation?

Senator McCARTHY. I would like to read the final paragraph of this, which contains the resolution, if I may, Mr. Chairman. It is very brief. I read:

Resolved, That the Committee on Rules and Administration of the Senate is authorized and directed to proceed with such consideration of the report of its Subcommittee on Privileges and Elections, with respect to the 1950 Maryland senatorial general election, which was made pursuant to Senate Resolution 250, 81st Congress, April 13, 1950, and to make such further investigations with respect to the participation of Senator McCarthy in the 1950 senatorial campaign of Senator John Marshall Butler, and such investigation with respect to his other acts, since his election to the Senate, as may be appropriate to enable such committee to determine whether or not it should initiate action with a view to expulsion from the United States Senate of the said Senator Joseph McCarthy.

And, Mr. Williams, I call your attention to the fact that is calls for an investigation of the Maryland election, and of McCarthy's activities since he was elected to the Senate, and nothing beyond that.

Mr. WILLIAMS. I now hand you a letter captioned "The United States Senate, Committee on Foreign Relations," bearing the signature of Guy M. Gillette, dated September 17, 1951, and ask you if you received this letter from Senator Gillette, regarding the work of this committee.

Senator McCARTHY. I assume that I did, Mr. Williams.

Mr. WILLIAMS. Would you look it over and tell us what your best recollection is, Senator?

Senator McCARTHY. I have previously looked it over, and my best recollection is that I received it. May I look it over again, now?

(The letter was handed to Senator McCarthy.)

Senator McCARTHY. Yes.

Mr. WILLIAMS. This letter, Mr. Chairman, has not been offered heretofore. I offer it now, and ask that it be included in the record.

The CHAIRMAN. I just want to see it, to examine it for its materiality.

Mr. WILLIAMS. Certainly [handing letter to the chairman].

The CHAIRMAN. The letter will be received in evidence.

Counsel calls my attention to the fact that it is already in evidence. But whether it is or not, I think it is material.

Mr. WILLIAMS. It is not on the list of printed exhibits.

Mr. CHADWICK. If we are sure of that, then my thought is wrong about it.

Mr. WILLIAMS. The list of printed exhibits——

The CHAIRMAN. Do you wish to read it into the record?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. WILLIAMS. The letter is as follows:

McCARTHY EXHIBIT No. 1

SEPTEMBER 17, 1951.

HON. JOSEPH R. McCARTHY,
United States Senate.

MY DEAR SENATOR: I have just received your letter of inquiry dated September 17, in which reference is made to the consideration of the resolution intro-

duced by Senator Benton of Connecticut making certain charges which referred to you. This resolution, No. 187, was referred by the Senate to the Senate Committee on Rules and Administration. This standing committee, in its turn, referred the resolution to the Subcommittee on Privileges and Elections. Senator Benton has asked for the privilege of appearing before the subcommittee in support of his resolution.

There has been no time fixed for the consideration of the resolution because of other matters that have prior claim on the time of the subcommittee. Thursday of this week has been suggested for the consideration but it is doubtful that the matter can be reached by that date. I am calling the subcommittee to meet Wednesday, September 19, at 10 o'clock in the morning to determine when they wish to take up the resolution for consideration, whether they wish to conduct hearings in connection with the resolution, and what procedure they wish to follow in discharging their responsibilities. I shall be very glad to call your letter to their attention and the request that you have made in the letter.

I am sure that the subcommittee will approach their responsibilities in the consideration of this resolution in the spirit of the utmost fairness to all concerned.

Sincerely,

GUY M. GILLETTE.

Mr. WILLIAMS. What request had you heretofore made, Senator McCarthy?

The CHAIRMAN. Do you have the letter?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Is that in evidence?

Mr. WILLIAMS. No, sir; that was not in evidence.

The CHAIRMAN. The letter will be the best evidence.

Mr. WILLIAMS. I am going to read that into evidence, with your permission, sir.

Senator McCARTHY. The letter of September 17, 1951, Mr. Williams, which I will hand you, and——

The CHAIRMAN. I assume you do not have the original.

Mr. WILLIAMS. The original must be in the hands of the recipient, Senator Gillette. We have only a copy, of course.

Senator McCARTHY. May I say this, that this is an exact copy.

The CHAIRMAN. May we see that, too? You may proceed with the letter.

Mr. WILLIAMS. The letter is:

McCARTHY EXHIBIT No. 2

UNITED STATES SENATE,
COMMITTEE ON EXPENDITURES IN THE EXECUTIVE DEPARTMENTS,
September 17, 1951.

Senator GUY M. GILLETTE,

*Chairman, Subcommittee on Privileges and Elections,
Senate Office Building, Washington, D. C.*

DEAR SENATOR GILLETTE: I understand that your subcommittee is planning on starting hearings Thursday of this week on the question of whether your subcommittee should recommend that McCarthy be expelled from the Senate for having exposed Communists in Government. I understand further that the only two witnesses who have asked to appear to date are William Benton, former Assistant Secretary of State, and a friend and sponsor of some of those whom I have named, and the American Labor Party, which has been cited twice as a Communist front.

I understand that, under Senate precedent, members of a full committee have always had the right to question witnesses who appear before a subcommittee of their own committee. This I propose to do in the case of witnesses who appear to ask for my expulsion because of my exposure of Communists in Government. In view of the fact that your subcommittee, without authorization from the Senate, is undertaking to conduct hearings on this matter, it would seem highly irregular and unusual if your subcommittee would attempt to deny me the right

to question the witnesses, even had I not been a member of the full committee. If there is any question in your mind about my right to appear and question the witnesses, I would appreciate it greatly if you would inform me immediately.

If your subcommittee attempts to deny me the usual right to appear and question the witnesses, I think it might be well to have the full committee meet prior to the date set for your hearings to pass upon this question. For that reason, it is urgent that you inform me immediately what your position is in the matter.

Sincerely yours,

JOE MCCARTHY.

The CHAIRMAN. For the purpose of the record, I think the letters ought to be marked as exhibits, so that we can keep track of them. Have you introduced any exhibits heretofore, Mr. Williams? Is that the first of your exhibits?

Mr. WILLIAMS. This is the first exhibit that we have offered, of a factual nature. So I will mark these, if I may, as McCarthy Exhibit No. 1, the letter of September 17, 1951, and as McCarthy Exhibit No. 2, which will appear as the letter from Senator McCarthy to Senator Gillette, the same date.

The CHAIRMAN. That will be sufficient marking, and then if you have other exhibits, you can show in order the numbers you have just introduced.

(The letters were marked "McCarthy Exhibits 1 and 2.")

Mr. WILLIAMS. Senator, I want to ask you if you received a reply to your letter to Senator Gillette, in which you asked for the right to appear and cross-examine the witnesses appearing against you in the expulsion proceedings.

Senator MCCARTHY. Yes, I did. I received a reply on September 25, 1951. It was dated September 25, received September 28, 1951.

Mr. WILLIAMS. It was received on what date?

Senator MCCARTHY. September 28, 1951.

Mr. WILLIAMS. Were you given, by Senator Gillette, the right to cross-examine witnesses appearing against you?

The CHAIRMAN. Just a moment. Do you have those letters?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Are those letters in evidence now?

Mr. WILLIAMS. This particular one has been introduced.

The CHAIRMAN. Then it should not be necessary to introduce it.

Mr. WILLIAMS. I am not going to read it. I am just summing up the contents so that we can move on.

The CHAIRMAN. So that it will be fresh in the minds of the committee and others, I think you had better read it.

Mr. WILLIAMS. This is a letter addressed as follows:

SEPTEMBER 25, 1951.

HON. JOSEPH R. MCCARTHY,
United States Senate.

MY DEAR JOE: I promised to tell you the decision of the Subcommittee on Privileges and Elections as to procedure as soon as they made the decision. They are going to take up the Benton resolution at 9:30 a. m. Friday, September 28, in room 457. At that time, they are going to hear Senator Benton's statement. They voted to hear the Senator in executive session, but also voted that you could be present if you so desired and if time permitted, to make a statement at this same meeting. It was also decided that there should be no cross-examination except by the members of the subcommittee.

A further decision was made that if additional evidence is taken, it will be governed by rules of procedure determined after this first meeting.

With personal greetings, I am

Sincerely,

GUY M. GILLETTE.

Mr. WILLIAMS. Now, I want to call to your attention, Senator, to an error that you made when you testified concerning this. This indicates it was received September 26, 1951, not September 28.

Senator McCARTHY. I believe you are right. It is the 26th instead of the 28th.

The CHAIRMAN. I understand we also have that same letter presented in evidence. It was presented by the committee some time back.

Mr. WILLIAMS. As of this time, Senator McCarthy, had there been a request from Senator Gillette or any other Senator on this subject that you be present at this meeting?

Senator McCARTHY. There had not.

Mr. WILLIAMS, may I tell you something else about this?

I had discussed this matter with Senator Gillette on the Senate floor. He assured me this would be an executive session. I told him if it was to be an executive session, I would not attend, that I would be in Arizona taking a few days' vacation.

Mr. WILLIAMS. The letter which you received on September 26 states it will be an executive session, does it not?

Senator McCARTHY. That is right.

Mr. WILLIAMS. Now, on September 28, 1951, to your knowledge, did the committee meet?

Senator McCARTHY. I read in the newspapers that it met.

Mr. WILLIAMS. I ask the Chair to take legislative notice at this time from the evidence that has been heretofore admitted that the committee met in open session and heard Senator Benton on September 28, 1951.

The CHAIRMAN. That is already in evidence?

Mr. WILLIAMS. Yes, sir.

Now, I ask you, as of this time, had there been any request by anyone of you to appear?

Senator McCARTHY. There had not.

May I call to your attention, Mr. Williams, while I was notified that Benton would appear in executive session, after I left town he was called in open session.

The CHAIRMAN. Is there a record of evidence for that?

I think the committee would want to know: Is there a record of evidence that they met in open session?

Mr. WILLIAMS. There is.

The CHAIRMAN. Are you prepared to supply it?

Senator McCARTHY. The hearings will so indicate, Mr. Chairman.

Mr. WILLIAMS. The records of the Subcommittee on Elections and Privileges show and this committee can, of course, judicially notice them—that the charges which were preferred by Senator Benton on September 28, 1951, were preferred in open session.

The CHAIRMAN. Well, the reason I am asking is for information, for the convenience of the committee.

Mr. WILLIAMS. Yes.

The CHAIRMAN. I am not challenging.

Mr. WILLIAMS. Yes.

The CHAIRMAN. I just want to know: Is it a matter of evidence now?

Mr. WILLIAMS. I will have to ask Mr. Chadwick if he has introduced it. My memory doesn't serve me.

The CHAIRMAN. If they have, it is a matter of record. What I want to be sure is we have these matters in the record.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. The Senate will want to know about these matters.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. And we want to be sure we have the complete record.

Mr. CHADWICK. Mr. Williams, if you will look at a letter from Senator Gillette to Senator McCarthy, dated October 1, 1951, and read by us in evidence, as exhibit No. 4—

Mr. WILLIAMS. That is right.

Mr. CHADWICK. You will find the verification both of the fact that the meeting was held and that it was a public one.

Mr. WILLIAMS. Yes, sir.

Mr. Chadwick is absolutely right. The next exhibit does show that Senator Benton testified in open session.

The CHAIRMAN. I was trying to be sure the record was complete.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Thank you.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Proceed.

Mr. WILLIAMS. Thank you, sir.

Now, I want to call your attention, Senator, to an exhibit which Mr. Chadwick offered the other day and which we have just referred to in the past moment, which was introduced as exhibit 4 originally, and ask you if in that letter from Senator Gillette there is a request of you to appear before what we shall call for easy identification the Gillette committee.

Senator McCARTHY. Pardon me while I read this, if you will.

The CHAIRMAN. Is the letter in evidence now?

Mr. WILLIAMS. Yes, sir.

Mr. CHADWICK. Yes, sir.

The letter speaks for itself, if you want to be technical.

The CHAIRMAN. I do not want to be technical.

The counsel calls my attention to the fact that the letter speaks for itself, but if the Senator wants to summarize it—

Senator McCARTHY. No. Mr. Gillette tells me here, "if you desire to come before us."

He said I had no right to cross-examine, however, but there is no request to appear in this letter.

Mr. WILLIAMS. Now, did you respond to that letter on October 4, Senator?

Senator McCARTHY. Yes. I did.

Would you like to have me read that response?

It is very brief.

Mr. WILLIAMS. No; because it has already been read.

In that letter you tell Senator Gillette that you do not wish to appear; is that right, in response to his invitation?

Senator McCARTHY. It wasn't an invitation. It was an offer to allow me to appear if I cared to appear. It was not an invitation. I told him that I acknowledged his offer to give me the opportunity to appear and that I was not accepting. I was not requesting an opportunity.

Mr. WILLIAMS. And that was on October 4 of 1951?

Senator McCARTHY. That is right.

Mr. WILLIAMS. Up until this time, had there been, from anyone, staff member or committee member, a request that you appear?

Senator McCARTHY. No.

Mr. WILLIAMS. Now, I want to direct your attention, Senator McCarthy, to December of 1951. I want to direct your attention specifically to the investigation which was being conducted by the committee of which you had personal knowledge and ask you to tell the committee those things of which you had personal knowledge.

Senator McCARTHY. Well, I had—

The CHAIRMAN. Which committee? May I interrupt there? Which committee are you now talking about?

Mr. WILLIAMS. I want him to tell your committee, Senator Watkins, the—

Senator McCARTHY. The Gillette committee.

Mr. WILLIAMS. The scope of the investigation of the Gillette committee, insofar as he has personal knowledge of it, as of the date, December 6, 1951.

Senator McCARTHY. Mr. Williams, I had—

The CHAIRMAN. Just a minute.

Senator McCARTHY. I had personally—

The CHAIRMAN. Just a minute. A question has been called to my attention. Are you testifying to what was actually being done?

Mr. WILLIAMS. Yes.

The CHAIRMAN. And not what the resolution covered?

Mr. WILLIAMS. Yes; what was actually being done.

Mr. CHADWICK. Mr. Williams, is it the subject matter of the letter of December 6, 1951, which was introduced and read as an exhibit?

Mr. WILLIAMS. No, sir. I am before that, Mr. Chadwick. I am asking the Senator now, before he wrote this letter, what, to his personal knowledge, was being done in the way of investigation by this committee acting purportedly pursuant to the resolution which is in evidence here, 187.

The CHAIRMAN. I assume you will qualify him so it will be clear he is speaking from personal knowledge.

Senator McCARTHY. I will be able to speak from personal knowledge.

Mr. Williams, while the resolution—and I don't concede this is a valid resolution, but assuming it is for the time being—restricts the investigation to an investigation of the Maryland election and acts that I committed since my election, I was aware on December 6, 1951, that the committee was going back as far as 1935, at least, that they were investigating acts in my life long before I was old enough to be a Senator, that they were investigating the income-tax returns of those who had contributed to my 1944 election, that they were investigating, for example, the income-tax returns of my father who had died before I was elected.

Mr. WILLIAMS. Now, did you call this fact to the attention of the chairman of the Subcommittee on Privileges and Elections?

Senator McCARTHY. I did.

Mr. WILLIAMS. Did you call to his attention the fact that the committee investigative staff was exceeding the scope of the resolution under which they were purporting to act?

Senator McCARTHY. I did.

Mr. WILLIAMS. And did you do that by letter?

Senator McCARTHY. Both by letter, Mr. Williams, and orally.

Mr. WILLIAMS. Was that on December 6, 1951?

Senator McCARTHY. My letter on December 6, yes.

The CHAIRMAN. That is one of the letters that is in evidence?

Mr. WILLIAMS. Yes, sir.

Now, prior to the time that that letter was written, which was introduced here by Mr. Chadwick as exhibit No. 6, had you received direct knowledge from a staff member of the committee as to the method in which the investigation was being conducted?

Senator McCARTHY. I had.

The CHAIRMAN. Well, now, I think you ought to probably identify it since we don't have it as part of the record, you might identify the staff member and the time and place and so on.

Mr. WILLIAMS. I might call the chairman's attention also to the fact that part of the record which the Chair has judicially noticed, part of the record which the Chair has already judicially noticed, covers the subject of Senator McCarthy's 1944 primary campaign.

The CHAIRMAN. It was admitted for the purpose of showing jurisdiction, for that limited purpose.

Mr. WILLIAMS. And I think, if I may say, sir, that the fact that that is covered is evidence in this record of an investigation that was going back behind Senator McCarthy's coming to the Senate in 1947; in other words, they reported fully on his 1944 campaign. I call the Chair's attention to that.

The CHAIRMAN. I think we have seen the record and, as I recall, it does indicate that they had been making some investigations back there.

Mr. WILLIAMS. Yes, sir.

Senator McCARTHY. In answer to your question, Mr. Williams—

Mr. CHADWICK. Excuse me just a minute, Senator.

Senator McCARTHY. Certainly.

(Discussion off the record.)

The CHAIRMAN. I take it you are offering this on the theory that the defense you interposed here that the committee lacked jurisdiction.

Mr. WILLIAMS. I offer it on the theory, Senator Watkins, that this committee was exceeding its authorization under Senate Resolution 187 as early as December 1951, by the investigation which it was conducting.

The CHAIRMAN. That is was exceeding?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. I assume you mean by that the committee was illegal because it was exceeding its jurisdiction.

Mr. WILLIAMS. I have not reached that point in our discourse yet, but I did want to demonstrate this point as of December 1951, that it was exceeding its jurisdiction already in going into the matter which there was, for which there was no authorization and rule.

The CHAIRMAN. All right.

Senator ERVIN. Your position is at the present moment that even assuming the resolution to be valid, the resolution would at least confine the committee to activities which did not antedate the election of 1946.

Mr. WILLIAMS. Exactly, Senator Ervin.

In other words that the resolution did not authorize the committee to go behind January 3, 1947.

Now, the last question that I asked you, Senator, was this: Prior to the communication that you addressed to Senator Gillette on December 6, 1951, did you have a conversation with a staff member of the subcommittee in question on the scope of the investigation?

Senator McCARTHY. I did.

Mr. WILLIAMS. Would you state the facts surrounding that conversation, the identity of the staff member?

Senator McCARTHY. It was Mr. Daniel Buckley, one of the staff members.

He reported to me, and I had never met him before, that he was sent to Wheeling, W. Va.

The CHAIRMAN. Just a moment. You are getting into what he was doing. We wanted to know primarily whether this is competent evidence or not.

Mr. WILLIAMS. I offer it for this reason, Senator: I think it becomes very germane to show Senator McCarthy's motive in his relationship with this committee.

Charge has been made that he was contemptuous of the committee. Now, I think we have to look at his mind in relationship to each communication that he had with the committee and what information he had at the time that he had such communication with the committee, and I think this goes very much to the heart of what his state of mind was as of December 6.

Now, I hasten to say to Senator Watkins that I am not departing from the record because the matter which I am going into is right in the report of the committee which is already in evidence.

The CHAIRMAN. I think it is probably proper to go on with the question of the state of his mind.

However, I think you should identify the time and place and name the person with whom he talked. That has not been done yet. I think that should be done before he proceeds to say what he learned or what he thought he learned.

Mr. WILLIAMS. I do, too, and I have just asked him to identify the person and the circumstances under which he talked to that person.

Senator McCARTHY. It was Mr. Daniel Buckley, one of the committee investigators. He called either me or Jean—I forget which one—said he had information which disturbed him a great deal. He came to see me and I think he saw me over at Jean's house. He reported to me that he had been sent to Wheeling, W. Va., to get the facts surrounding the Wheeling speech, question of whether I had said two hundred five or fifty-seven, that he came back with, I believe, 8 affidavits and that all except 1 completely contradicted Senator Benton's contention; that after he was back—I am relating this from memory, Mr. Chairman—after he was back in the office, he received a call from Senator Tydings who is not a member of the committee, castigating him.

The CHAIRMAN. Just a moment. I think that probably is outside of the scope of the investigation. I ruled that that is immaterial.

Mr. WILLIAMS. What he did.

Senator McCARTHY. That he was criticized for not receiving affidavits which would uphold Benton's position; that he was then relegated to a position at a desk, no longer—strike that—first, he went

back; he was taken back down to Wheeling with some of the other investigators; attempt made to get some of the people who signed the affidavit to change their affidavits, to uphold Benton's position. They were unsuccessful.

After that, he was relegated to a position at a desk, no longer an investigator; after that he quit.

Mr. WILLIAMS. Now, do you have this information concerning Buckley's experiences in Wheeling?

The CHAIRMAN. Just a minute. Maybe I have slipped one, but did you give his name?

Senator McCARTHY. Daniel Buckley.

The CHAIRMAN. That's right. I beg your pardon.

Mr. WILLIAMS. Did you have this information regarding Buckley's experiences in Wheeling before your communication of December 6 to Senator Gillette?

Senator McCARTHY. All except possibly his quitting.

I am not sure if he had quit by December 6. I wouldn't know the date that he quit.

Mr. WILLIAMS. Now, on December 6, you did write to Senator Gillette; did you not?

Senator McCARTHY. I did.

Mr. WILLIAMS. And that letter is already in evidence so I won't ask you to reread it, but in that letter, you pointed out to him, did you not, that you felt that his committee was way outside the scope of its authorization?

Senator McCARTHY. Yes, I pointed it out and I felt that at the time very strongly.

Mr. WILLIAMS. As of this time, and I now address myself to December 6, 1951, had there been a request from any member of the committee or any staff member, that you appear before the committee?

Senator McCARTHY. There had not.

Mr. WILLIAMS. Senator, it was thereafter, was it not, that you wrote to Senator Gillette and requested of him the names of the persons who were working on the investigation that was being conducted pursuant to Senate Resolution 187?

Senator McCARTHY. Yes, that is right.

Mr. WILLIAMS. And the communications that you had with him over the next week related to that subject matter; did they not?

Senator McCARTHY. Apparently so.

Mr. WILLIAMS. Would you look at that now, sir?

Senator McCARTHY. December 7, yes; December 11, yes; December 19, yes. Let's see—December 7, I asked for the information. December 11, I got a letter not giving me the information, giving me some of it. December 19, I again write and ask for the information. I guess that would cover the week.

Mr. WILLIAMS. Now, I call your attention to a letter which has already been introduced into evidence as exhibit No. 11 by Mr. Chadwick, a letter dated December 21, 1951, addressed to you and bearing the signature of Senator Guy Gillette. I ask you, sir, if in this letter there is any request of you to appear before this committee.

Senator McCARTHY. Could I take a minute to—no, he says on page 66 of Mr. Chadwick's exhibit, as I have told you before, if you care to appear before the subcommittee, we shall be glad to make the necessary arrangements as to time and place.

May I say, Mr. Williams, that I informed Mr. Gillette that I had no desire to appear before the committee. I was very frank in telling him I thought they were beyond their jurisdiction but I would honor a subpoena if they served one on me. I said, either a subpoena or an order—I forget which—I told the press, also, that I would not appear unless I was ordered to appear because I had no desire to appear before that committee.

Mr. CHADWICK. Mr. Williams.

Mr. WILLIAMS. Yes, sir.

Mr. CHADWICK. Will you clear up with your client whether or not he said it appeared in any letter or any other evidence before this body, or whether it is simply from his recollection?

Mr. WILLIAMS. They appear in the record and in evidence now because he just testified to the fact which he has knowledge of regarding his conversation with Senator Gillette. It is clearly germane here.

The CHAIRMAN. It is germane all right. The point is, he was asking for information, if it appeared in any letter.

Senator McCARTHY. I would have to go through all of the letters to find out.

The CHAIRMAN. I would like to know for the record when it was he talked to Senator Gillette and where.

Mr. WILLIAMS. Do you have a recollection on that?

Senator McCARTHY. I talked to Guy Gillette a number of times. He told me by letter that if I wanted to appear, I could appear; told me I could not cross examine. He told me the same thing on the Senate floor. I told him unless I had the right to cross examine, which is an inherent right in any hearing to expel a Senator, that I had no desire to appear but that if I were ordered to appear, I would appear.

I am not sure that I used the "order" or "subpena." I think I used the word "subpena." I am sure Senator Gillette would confirm that.

Mr. WILLIAMS. So that, at this time, you had told Senator Gillette that if an order were issued, or a subpoena—which is, in fact, an order to appear—you would do so?

Senator McCARTHY. Mr. Williams, I cannot tell you as to time. I can tell you that I did tell Guy Gillette a number of times that I would not appear; on my own motion, I would not request the right to appear, but that if there were a subpoena or an order, I would honor such subpoena. That was told to the press, also, that I would honor a subpoena, even though the Parliamentarian had informed me that they had no right to subpoena a Senator during the session; and I have been so informed again.

Mr. WILLIAMS. Now, taking you down to the first part of January 1952: as of January 1952, had there been any request from any member of the committee or any staff member that you appear before the Gillette committee?

Senator McCARTHY. Mr. Williams, I hate to hold you up, but there is a letter, here, of January 10. I would like to glance through it and make sure whether there was no request.

Mr. WILLIAMS. That is already in evidence.

Senator McCARTHY. No, there was no request as of January 31, 1952.

Mr. WILLIAMS. Now, directing your attention to March 1952, when there was another exchange of correspondence between you and Senator Gillette and Senator Hayden, I ask you the question as to whether or not, as of that date, there had been a request by any staff member or any member of the committee—I include anyone connected with that committee—for you to appear.

Senator McCARTHY. There had not.

Mr. WILLIAMS. Now, in April of 1952, a resolution was adopted by the Senate, which gave this committee the right to conduct an investigation under Senate Resolution 187; is that right?

Senator McCARTHY. That is correct. I voted for the resolution.

Mr. WILLIAMS. Did that resolution extend the scope of investigative power of this committee beyond January 3, 1947?

Senator McCARTHY. Well, if you will read the resolution, Mr. Williams, you will find that it is restricted strictly to an investigation under Senate Resolution 187—no extension of power.

Mr. WILLIAMS. Now, as of this time, did you have knowledge—personal knowledge—of the scope of the investigation that was continuing by the investigative staff of the Gillette subcommittee?

Senator McCARTHY. I did.

Mr. WILLIAMS. Can you tell us whether or not the investigation of you went back of 1947?

Senator McCARTHY. Far behind 1947—I say dates at which I was not old enough to be a candidate for the United States Senate.

May I say, Mr. Williams, I had no objection to their investigating my life from birth to date, if they were doing it under a valid Senate resolution; if the Senate voted to have me investigated, they could do that.

They have not so voted; therefore, the committee was conducting an illegal and improper investigation.

Mr. WILLIAMS. Now, on May 7, 1952, you received a letter from Senator Gillette, did you not?

Senator McCARTHY. Yes, sir; that is right.

Mr. WILLIAMS. I refer to the letter which has already been introduced as exhibit No. 17, of Mr. Chadwick's. In that letter you were advised that "A hearing will be held on May 12." Is that not right?

Senator McCARTHY. That is right.

Mr. WILLIAMS. There was a demand that you be present?

Senator McCARTHY. No. The language of the letter is:

I do wish to extend to you the opportunity to appear.

Mr. WILLIAMS. Is there a request that you be present?

Senator McCARTHY. No request; there is just an extension of the opportunity to appear, and "hope you will act as a spectator"—which I would have a right to do at a public hearing, without the invitation.

Mr. WILLIAMS. Now, as of May 7, 1952, had there been from anybody, either on the committee or on the staff of the committee, a demand or request—I use the two terms significantly—a demand or a request to be present?

Senator McCARTHY. Neither a demand nor a request.

All I had received up to that time was a number of letters from Senator Gillette telling me that if I desired to appear, I could appear, and in some cases, apparently, whether as a spectator; but he made it clear that I could appear as a witness, if I wanted to.

Mr. WILLIAMS. Well, now, in that letter of May 7, 1952, which is referred to in this hearing as exhibit No. 17, you were advised that the committee would take evidence on what they called case No. 2 the Lustron matter; is that right?

Senator McCARTHY. That is right.

Mr. WILLIAMS. Did you write a letter on May 8, 1952, giving the committee pertinent information on the Lustron matter, and calling their attention to matters of record on that subject?

Senator McCARTHY. I did, and gave them all the information that I had at my command on the Lustron matter.

Mr. CHADWICK. Mr. Williams, that, I take it, is the letter which has heretofore been read, called exhibit No. 18?

Mr. WILLIAMS. That is right, sir.

Now, did there come a time when you did, in fact, appear before this particular subcommittee and testify?

Senator McCARTHY. Yes; I appeared before the subcommittee and testified.

Mr. WILLIAMS. And on what date was that?

Senator McCARTHY. I frankly would not recall the dates. I know that I appeared and testified. It would be impossible to recall the dates.

Mr. WILLIAMS. Let me, in the orderly sequence of things, then, address your attention, Senator, to a letter dated May 10, 1952, signed "Guy Gillette" addressed to you, which is of record as exhibit No. 20, and ask you whether or not any demand or request is made of you to appear in connection with Senate Resolution 187.

Senator McCARTHY. No. There is merely repeated the statement in his letter of the 7th, in which he says—I quote:

I shall extend to you an opportunity to appear at the hearings for the purpose of presenting testimony related to this charge.

Mr. WILLIAMS. That is quoted from the previous letter?

Senator McCARTHY. That is right.

Mr. WILLIAMS. Now, would you look at the fourth paragraph of that letter?

Senator McCARTHY (reading):

It seemed the courteous thing to do to invite you to appear, to attend, so you could have full opportunity to present additional evidence, or, at a later period, to present any evidence you might wish to make available to us in refutation or in explanation of any evidence which you adduced at the hearings. That was the purpose of my letter to you, and you are assured that the opportunity will continue to be yours to present such matters as you wish.

In other words, he says, here:

The opportunity will continue, to appear and present such matters as you wish, to refute Benton's charges.

Mr. CHADWICK. The evidence you desired to present was in connection with this hearing—if you desired; is that right? Is that the idea?

Senator McCARTHY. "If you desire to do so." I think that should be part of it. So he emphasized that this was only if I desired to come—up to this point.

Mr. WILLIAMS. Now, thereafter, without going into detail, did you have an exchange of correspondence with Senator Gillette regarding an appearance in connection with Senate Resolution No. 304?

Senator McCARTHY. I did.

Mr. WILLIAMS. And is that the resolution on which you testified on July 3, 1952?

Senator McCARTHY. I assume that is the correct date.

Mr. WILLIAMS. And that was your Senate Resolution 304?

Senator McCARTHY. Right.

Mr. WILLIAMS. Now, up until the time that you had testified on July 3, 1952, had there been either a command or a request that you appear in connection with Senate Resolution 187?

Senator McCARTHY. No; there had not, Mr. Williams, either oral or written.

Mr. WILLIAMS. Had you had any conversation with any member of the committee on the subject of a subpoena by Senator Gillette?

Senator McCARTHY. I had only conversation with Guy Gillette, as far as I know.

Mr. WILLIAMS. Now, directing your attention, Senator——

Senator McCARTHY. That is with regard to the subpoena.

Mr. WILLIAMS. With regard to the subpoena.

To September of 1952, as of this date, had the resignations of another staff member and a committee member come to your attention?

Senator McCARTHY. Mr. Williams, I am afraid you will have to refresh my recollection as to the date of the resignations.

I know that Senator Welker resigned, pointing out that the committee was being used for political purposes.

Two staff members resigned, pointing out that the staff was being dishonestly used—and I don't know they used the word "dishonestly," but that was the purport of it.

Ultimately 3 of the 5 committee members resigned.

Mr. WILLIAMS. Now, it was at this time, was it not, that Senator Gillette also resigned?

Senator McCARTHY. Yes, Senator Gillette resigned one day—yes, now that I think of it, I believe Senator Welker resigned on September 9; is that correct?

Mr. WILLIAMS. Yes, sir.

Senator McCARTHY. Pointing out that he would not serve on a committee that was being used for political purposes, being dishonestly used.

Guy Gillette resigned the following day.

Senator Monroney resigned a short time later.

Mr. WILLIAMS. That was in November, was it not?

Senator McCARTHY. I believe in November.

The CHAIRMAN. You have in your possession letters of the resignations?

Mr. WILLIAMS. I have them in the record, Mr. Chairman.

The CHAIRMAN. I think it is rather immaterial to this issue whether anybody resigned or not, but I do not mind it being in evidence.

However, I would like to have the letters. The letters would be the best evidence.

Senator McCARTHY. I think it might be material for this reason, Mr. Chairman, if I may say so:

There was a five-man subcommittee. Once three of the members had resigned there was no longer a legal subcommittee.

Mr. WILLIAMS. Senator Welker resigned on September 9, 1952, by a letter which appears in the record, exhibit No. 36.

I refer to the report of the Gillette committee. Senator Gillette—

The CHAIRMAN. Is that in evidence now?

Mr. WILLIAMS. Well, I understood that you took judicial notice—

The CHAIRMAN. Well, we will take judicial notice—

Mr. WILLIAMS. Yes.

The CHAIRMAN. But we did not take everything and put it in this hearing record, to take judicial notice of.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. We said we can take judicial notice of these matters.

Mr. WILLIAMS. Yes.

The CHAIRMAN. But I think for this hearing record which we are building up for the use of the Senate—

Mr. WILLIAMS. Yes.

The CHAIRMAN. We ought to have such material that is pertinent introduced in evidence.

Is that in the hearing record at all—I mean the hearing record of the so-called HHH Committee?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. I had not examined it thoroughly with respect to all the letters.

Senator McCARTHY. Page 94.

The CHAIRMAN. May I ask our counsel: Was that letter of Senator Gillette's put in evidence?

Mr. CHADWICK. I think not, sir. I don't recall that it was, but I will gladly consult the record and see if there is a letter on that subject and call it to the chairman's attention for his disposition.

The CHAIRMAN. You claim it is material, do you?

Mr. WILLIAMS. I think—

The CHAIRMAN. You might tell us your theory on it as to why you think it is material.

Mr. WILLIAMS. I think I can tell you that in very short order, Mr. Chairman.

The Benton resolution of August 6, I believe, of 1951, was referred to the Committee on Rules and Administration and then, in turn, referred to the Subcommittee on Privileges and Elections.

At that time a five-man committee undertook to conduct hearings pursuant to that resolution. The investigation hearings continued over a period of a year.

At the end of the year there were only 2 of the original 5 present. Not only were there only 2 of the original 5, but the committee membership was changed with no authorization from anyone from a 5-man committee to a 3-man committee.

Senator McCARTHY. Without committee approval.

Mr. WILLIAMS. Without committee approval.

The CHAIRMAN. Can you establish that as a matter of record?

Ordinarily it is assumed that things will be done according to rules and regulations unless the contrary is shown.

So, I think it would be obligatory upon you to show a failure of action.

Mr. WILLIAMS. I call the attention of the Chair to page 95 of what the Chair calls the H-H-H report, and to exhibit 37, a letter dated

September 10, 1952, and I offer that as evidence of the things which I have just stated.

The CHAIRMAN. Whose letter is that?

Mr. WILLIAMS. A letter directed to Senator Carl Hayden, chairman of the Committee on Rules and Administration, signed by Senator Guy Gillette.

The CHAIRMAN. May I examine the letter for a moment?

It is only evidence, of course, of what Senator Guy Gillette says about it, but it does not clear up the matter I called to your attention.

What was the action of the full committee, or the chairman, who has the power to appoint these committees, create the size of them?

Mr. WILLIAMS. So far as we can determine, Senator, this happened:

Senator Welker and Senator Gillette stepped down. That left Senators Monroney, Hennings, and Hendrickson, and then Senator Monroney stepped down and Senator Hayden substituted himself therefor.

So, No. 1, the actual constituency of the committee was changed in the middle of the expulsion hearing, 3 of the original members no longer being on it when the report was signed, but, No. 2, the numbers of the members was changed from a committee of 5 to a committee of 3, and there is nothing that we can find by way of authorization of that in the records of the committee itself.

The CHAIRMAN. You have made an investigation?

Mr. WILLIAMS. Yes, sir.

Senator ERVIN. Mr. Chairman.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. I would like to ask Mr. Williams if he has any law for his position, because recently as a member of the Supreme Court of North Carolina I had to write an opinion involving the question whether the power of a board or committee ceases by reason of deaths or withdrawals from the group, and I came to the conclusion and wrote an opinion to the effect that as long as the majority of the group continue, the legal power can be exercised by the majority.

Mr. WILLIAMS. I would subscribe to that, Senator Ervin, but the majority didn't last here, because only 2 of the 5 lasted.

Senator ERVIN. Senator Hayden was the chairman, wasn't he?

Mr. WILLIAMS. He was not in any way concerned with these proceedings, until after——

Senator ERVIN. That is true.

Mr. WILLIAMS. 1952.

Senator ERVIN. That is true. I haven't been here long, and you haven't been here at all, but I will ask, as a matter of fact, this question: Who appoints the members of the subcommittee?

Senator McCARTHY. The full committee.

Mr. WILLIAMS. I understand the full committee does, by vote.

Of course, you pointed out, I haven't been here at all.

Senator ERVIN. Well, I haven't been here long enough to find that out.

Mr. WILLIAMS. But I was always told the full committee appointed the members of the subcommittee. However, I have to yield to the superior knowledge around me.

Senator ERVIN. If you are right in your position——

Senator McCARTHY. May I——

Senator ERVIN. If you have a subcommittee of 5, and especially on a closely divided Senate, and 3 of the majority and 2 of the minority, the minority can just resign and then you would paralyze the action of the subcommittee; wouldn't it?

Senator McCARTHY. May I, Senator, for your benefit, say, as far as I know, from consulting with the Parliamentarian, the chairman nominates the members of the subcommittee; the full committee must confirm them or they are not legally acting as members of the subcommittee. That is to the best of my knowledge. So, therefore, you had 2 members of a 5-man committee acting.

Senator ERVIN. And then to Mr. Williams another legal question: You may have a de facto committee even if you do not have a de jure committee. That is just something to think about. I have no opinion on law, but there are some legal problems that strike me as pertinent.

The CHAIRMAN. I will say the committee staff will be directed to make an immediate investigation of that situation.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. The committee wants to know the legal status.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. We will try to dig up whatever facts there are.

Mr. WILLIAMS. You will, I am sure, be more successful in getting the facts than I in directing the staff to look into this.

The CHAIRMAN. We will get what facts there are, if they are in existence. If they are not—

Mr. WILLIAMS. Yes, sir.

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. Mr. Chairman, was the letter of Senator Gillette resigning from the committee introduced into the record?

Mr. WILLIAMS. I think it should be. I have offered it.

Senator CASE. I think it should be, Mr. Chairman.

The CHAIRMAN. I think so, too, and, if we have finally finished the discussion, if you will now offer it, we will receive it in evidence.

Mr. WILLIAMS. I will offer it.

The CHAIRMAN. The letter will be received as McCarthy exhibit No. 3.

McCARTHY EXHIBIT No. 3

SEPTEMBER 10, 1952.

Senator CARL HAYDEN,

*Chairman, Committee on Rules and Administration,
United States Senate, Washington, D. C.*

MY DEAR CARL: Doubtless you are seriously disturbed, as I am, over the recent action of Senator Welker and Investigator Poorbaugh. Both of these resignations were given to the press before I received them.

The situation that has developed with reference to the subcommittee work, seems to indicate a purpose on the part of some columnists and adherents of both Senator Benton and Senator McCarthy to discredit the work of the subcommittee. Recently, the efforts have been directed to attacks on me personally. While, of course, I can take my share of abuse, I do not want the fine work that the subcommittee has done, and is doing, to be impeded or jeopardized by me. As you know, I tried to resign as chairman earlier last spring, but you pointed out the situation with reference to membership on the Rules Committee, which made it difficult to fill my place with a new assignment from the Democratic side of the committee. I have definitely concluded that the best interests of the subcommittee, and its future work, would be for a new chairman to be selected to handle its work.

Realizing the difficulty, which you presented before, of finding a replacement for me in the membership of the Rules Committee, may I suggest that the membership of the subcommittee be again limited to three members. You will recall, that 2 members were added, at my request, at the time the subcommittee was investigating the Maryland case, and Senators Monroney and Smith had requested that in view of the fact that they were not lawyers that 2 attorneys be assigned. It was for this reason that the membership was increased to 5, and a membership of 5 has distinct disadvantages. It is quite essential that the subcommittee work in harmony and its actions be taken with unanimous support so far as possible. This has necessitated trying to get the five-man membership together or in contact so that they can present their views. It has meant postponement after postponement of action, as the membership of the subcommittee was scattered, or one member or other absent from Washington, and subcommittee sessions postponed awaiting the members return.

When the subcommittee membership consisted of three members, we had little difficulty in this regard, and I feel strongly that it should be restored to this number.

If Senator Welker carries out his announced intention and sends his resignation to you, the opportunity is clear for a return to a three-man membership. My resignation would be clearly indicated and would leave Senators Hennings, Monroney, and Hendrickson. As you know, there are no three members of the Senate who are more capable, or more high minded, than these men. They have always been scrupulously fair in their consideration of the difficult problems laid before the subcommittee. There is no doubt in my mind that it would be in the best interest of the work of the subcommittee to take the action I have suggested.

I have called a meeting of the subcommittee in Washington, the 26th of this month. It would be of special advantage if this action of reduction in membership, and the acceptance of my resignation, could be consummated in time for that meeting. I will, of course, be there to help out and help in plans to carry out the work, so far as I could properly participate in the plans.

I am sending a copy of this letter to the other members of the subcommittee, and I surely hope that you will see the matter as I do. I realize, of course, that I will be attacked severely for alleged "running out on responsibilities" but the integrity of the election processes, and the value of the subcommittee's work, are far more important than my own feelings in the matter.

With warm personal greetings, I am

Sincerely,

GUY M. GILLETTE.

Mr. WILLIAMS. Mr. Chairman, may we have a 5-minute recess?

The CHAIRMAN. We will be liberal. We will take 10 minutes.

(Whereupon, at 3:15 p. m., a 20-minute recess was taken.)

The CHAIRMAN. The committee will resume session.

You may proceed, Mr. Williams.

Mr. WILLIAMS. Senator McCarthy, exhibit No. 21 was introduced last week by Mr. Chadwick. It is a letter dated May 11, 1952, regarding the open hearings that were scheduled in the month of May 1952 in Senate Resolution 187.

What were the circumstances surrounding the writing of that letter?

Senator McCARTHY. Well, the committee had received a staff report that a Mr. Robert Byers—

The CHAIRMAN. Just a moment.

I think probably that is hearsay and that it is incompetent evidence, immaterial as well, and I strike that out.

Mr. WILLIAMS. I want to show what was in the writer's mind when this letter was written, because that was introduced as being relevant by Mr. Chadwick to these charges; therefore, I think it becomes most relevant as to what facts were in his mind at the time the letter was written.

I don't think the letter standing alone is the final answer to the charge.

The CHAIRMAN. What the Senator was testifying to is that this man had become incompetent, or something of that sort.

Now, clearly, that is a statement of fact. That is not a statement of what was in his mind. That is irrelevant, immaterial.

Mr. WILLIAMS. I will ask him what his information was at the time he wrote this letter which was introduced by Mr. Chadwick.

The CHAIRMAN. Suppose the situation were that this man actually were insane. What difference would it make in this case?

I am asking that sincerely. I want to know what is your point of view on the materiality.

Mr. WILLIAMS. I think it goes to the kind of investigation that was being conducted here.

If a witness was called who was so unstable he was mentally incompetent, as a supporter of some of the charges that were being leveled, then it seems to me it goes to the investigative techniques of the committee, and the manner in which this investigation was being conducted under Senate Resolution 187.

The CHAIRMAN. I do not see that that is material. The letter, of course, speaks for itself, but I should say in addition to that, the matter is immaterial, the matter that is material here is whether the committee, in view of the rules, whether the committee had jurisdiction and whether an investigation was actually going on.

We are not going to investigate whether the charges—whether the charges that were being investigated were true or false, or whether the evidence was good, bad, or indifferent.

The only matter this committee is interested in is whether a resolution had been introduced authorizing the investigation, and second, was it being carried on, and did it have jurisdiction.

That has been raised by you. But I do not think whether an investigator was incompetent, whether he was insane, or not insane, has anything particularly to do with this particular investigation we are now conducting.

Senator McCARTHY. May I have 30 seconds on this?

The CHAIRMAN. We did have a rule once that only one of you was to speak to these matters, and I have waived it several times, if you recall.

I will waive it again. Go ahead Senator.

Senator McCARTHY. I merely want to point out that the star witness was known to the committee to be —— this has to do with whether or not I would volunteer to appear as a witness.

The CHAIRMAN. I think what you said about "smear job," and all that—that it go out of the record.

Mr. WILLIAMS. There is one other thing, Senator.

Senator ERVIN. I believe the same thing about what the Senator said about the committee. I believe that the Senator should tell us about the facts and let us draw the conclusions as to whether the committee had the state of mind he stated.

Senator McCARTHY. I would like to tell the facts.

Mr. WILLIAMS. There is one other thing I want to call to your attention, Mr. Chairman. You said we were concerned solely with whether this committee was exceeding its jurisdiction.

We are also concerned with whether or not they ever requested Senator McCarthy to be present, as we unfold the facts.

The CHAIRMAN. That may be one phase of the case.

Of course, there is a legal question that will be involved.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. We have shown that already by our investigation, probably, and we are not passing on that yet, finally, as to whether that is right or wrong, that you wouldn't necessarily have to be subpoenaed or ordered in or even requested.

Mr. WILLIAMS. Now, as of 1952, September, of your personal knowledge, can you tell us whether or not the committee was conducting an investigation back behind 1947?

Senator McCARTHY. They were.

The CHAIRMAN. Let's find out just what the basis of his knowledge is. That is a conclusion. On the face of it, it would appear maybe the Senator would not have personal knowledge of it, but let's find out. I do not want to have to discover——

Mr. WILLIAMS. Do you know whether or not your bank records in 1935 at the Shawano Bank in Wisconsin, were being looked into?

Senator McCARTHY. My correspondence with the bank was run in serial form in the opposition press in my State, letters having nothing to do with misconduct, letters asking for extension of time to pay interest, the response from the bank president, letters gotten by the committee.

That was given to the opposition press. It had nothing whatsoever to do with any election. It is all a matter of public record that they gave——

The CHAIRMAN. Just a moment, Senator. I have asked you about whether you knew personally, or not.

Now, you have not indicated how you happened to know. You want to tell about these things. That is not direct evidence of what the committee did.

You say these things were run in the paper. Of course, you can read the newspaper, but whether or not the committee read the paper would be an entirely different thing.

Senator McCARTHY. I was advised by Mr. Gillette.

The CHAIRMAN. That, of course, is hearsay again.

It seems to me that unless we are going to waive the hearsay rule completely that that is not the way to prove that these things were done.

You say you know of it personally and your own personal knowledge is what you get from somebody else telling you. That is hearsay under the rule.

Senator McCARTHY. The chairman of the committee, Mr. Gillette, would not be hearsay. They are in the record now.

Mr. WILLIAMS. Now, Senator——

The CHAIRMAN. If it is in the record, there is no necessity for your testifying to it.

Senator McCARTHY. Very well.

The CHAIRMAN. I do not know that it is, but if it is there, it is there.

Senator McCARTHY. Very well.

The CHAIRMAN. All I am trying to do is keep this investigation on its tracks and observe some of the rules with respect to hearsay, materiality, and relevancy.

Proceed.

Mr. WILLIAMS. Senator, I want to come down, sir, to November of 1952. I direct your attention to a letter written on November 7, which was offered in evidence here by Mr. Chadwick, signed by Paul Cotter, the chief counsel of the Privileges and Elections Subcommittee.

I ask you, first of all, whether there is any demand or request that you appear before the subcommittee.

Senator McCARTHY. I do not so interpret it.

Mr. WILLIAMS. I ask you whether or not—

Mr. CHADWICK. Mr. Williams, the letter does contain the word "invite"; does it not?

Mr. WILLIAMS. Yes, sir.

What is your point, Mr. Chadwick?

Mr. CHADWICK. The word has not been used. You eliminated two other words not used in the letter.

Mr. WILLIAMS. Do you want to conduct your cross-examination on this now?

Mr. CHADWICK. No, sir, Mr. Williams; that was directed to you. I do not cross-examine you.

Mr. WILLIAMS. I ask you whether or not, Senator, your presence was requested or demanded?

Senator McCARTHY. No, it was not.

Mr. WILLIAMS. By this letter of November 7?

Senator McCARTHY. It was not.

Mr. WILLIAMS. I ask you whether or not you were in the District of Columbia at the time that that letter was sent to your office and to refresh your recollection on that, I will show you a letter dated November 10, 1952, which purports to be a response to that.

Senator McCARTHY. No, I was not, and Mr. Cotter was so informed.

Mr. WILLIAMS. And that was a letter dated November 10, 1952, is that correct?

Senator McCARTHY. Right.

Mr. WILLIAMS. And that letter is signed by Ray Kiermas, administrative assistant to Senator McCarthy?

Senator McCARTHY. Right.

Mr. WILLIAMS. And that letter was introduced as exhibit 40 by Mr. Chadwick.

Senator McCARTHY. Correct.

Mr. WILLIAMS. Now, Senator, I want to call your attention, sir, to a letter which was introduced by Mr. Chadwick, dated November 21, 1952, signed by Senator Hennings, sent to the Senate Office Building, room 254, Washington 25, D. C., and ask you whether or not you received that letter which purports to have been delivered by hand on that date?

Senator McCARTHY. It was apparently received on the 28th of the month.

Mr. WILLIAMS. Where were you on November 21, 1952?

Senator McCARTHY. Up in northern Wisconsin, deer hunting.

Mr. WILLIAMS. Can you tell us where you were in northern Wisconsin?

Senator McCARTHY. I believe it was at Kings Gateway, out beyond the Eagle River.

Mr. WILLIAMS. Now there appears as exhibit 42 in the Hennings-Hendrickson-Hayden report a telegram which is undated wherein you are requested to appear.

Did you ever receive such a telegram?

Senator McCARTHY. Mr. Williams, in connection with this, I would like to compliment counsel for the committee in that they very honestly gave us information which we did not previously have; namely, that this was marked "Not sent." It was not sent. The inclusion of this in the Hennings-Hayden-Hendrickson report was completely dishonest. That wire, as indicated on it, was not received.

The CHAIRMAN. Senator McCarthy, there is something that strikes me there right now. You draw the conclusion that that was completely dishonest. It could have been a mistake, could it not?

Senator McCARTHY. I do not think it was a mistake.

The CHAIRMAN. You seem to draw the conclusion outright that this is completely dishonest.

Mr. WILLIAMS. I would like to have the wire that we gave to Mr. Chadwick so that we can see the difference between the two wires.

The CHAIRMAN. There is a possibility that that could have been included. Sometimes those things happen, that exhibits do sometimes get mixed up. I want the record to show whether you think it is completely dishonest because it is in there.

Senator McCARTHY. I think to put in the record, Mr. Chairman, the wrong wire when they had the wire that they sent, I frankly think that was dishonest.

The CHAIRMAN. Well, you have your opinion.

Senator McCARTHY. There is always a possibility of a mistake.

The CHAIRMAN. Surely.

Mr. CHADWICK. Mr. Williams, may I say that such investigation as we could make did not elicit a copy of that other wire. I think it was the Senator's own letter that led us to call for the original.

Mr. WILLIAMS. Now, I want to ask you this, when you received the wire that is dated the 22d of November 1952, which is addressed to Appleton, Wis.—

Mr. CHADWICK. The telegram of the 21st was apparently received in Appleton on the 22d.

Senator McCARTHY. I received that when I returned to Washington the 28th day of November, I believe.

May I say, Mr. Williams, this is the first correspondence that might indicate a request to appear. It placed a time limit in which I was not in the city. The staff knew I was not in the city. I received it after the time limit had expired.

Mr. WILLIAMS. November 21, I ask the committee to judicially notice, was a Friday. The letter which purports to have been delivered by hand on November 21, and which has been introduced in evidence, was delivered on a Friday to room 254, Senate Office Building. In that letter there is a request of Senator McCarthy to appear on Saturday, November 22, through but not later than Tuesday, November 25.

This wire of November 21, 1952, which was addressed to Appleton, Wis., requests Senator McCarthy to appear tomorrow, Saturday, November 22, but not later than Tuesday, November 25.

I would like to read the two wires in evidence which are in dispute here since the question has been raised on that.

MR. CHADWICK. Mr. Williams, if I were permitted to, I would object to reading this other wire, because it was never offered in evidence. Without objection from me, you might read the telegram which you have in your hand, if you want to. It has already been read once.

MR. WILLIAMS. I would like to read, Mr. Chadwick, the wire which appears in the Hennings-Hayden-Hendrickson report.

THE CHAIRMAN. You mean the one that was not sent?

MR. WILLIAMS. Yes, sir; because I think the sharp contrast between the two wires is indicative of something which might interest the committee.

THE CHAIRMAN. You may proceed.

MR. WILLIAMS. I read this, Mr. Chairman, because this is the wire on which the report is based, and which the report makes reference to when it calls attention to the request made of Senator McCarthy to appear, and that is in evidence, that part of the report. This wire—

THE CHAIRMAN. It is in evidence for the limited purpose. If you want it for any other purpose, of course, you would have to offer it for those purposes.

MR. WILLIAMS. This wire is addressed to Senator Joseph R. McCarthy, room 254, Senate Office Building, Washington, D. C.:

Senator JOSEPH R. MCCARTHY,

Appleton, Wis.

Senator JOSEPH R. MCCARTHY,

Hotel Desert Hills, Phoenix, Ariz.

Reference is made to our letter of November 7 again inviting you to appear before this subcommittee and to the reply of your administrative assistant received today. You are advised that this committee does not consider the aforementioned letter of your assistant to be an adequate or satisfactory answer. This committee desires an opportunity to examine you under oath to clarify, if possible, certain questions that have been raised on facts at hand, particularly with respect to your intricate financial transactions and certain of your activities. Your continued refusal to cooperate with the committee in its efforts to carry out the instructions of the United States Senate would appear to present a conscious—

and this is what it says:

a conscious disregard by you for the Senate's authority and a desire to prevent a disclosure of the facts. Failure to receive a reply by return wire that you will appear before this committee in executive session no later than November 20 can only be construed as a final refusal to testify under oath before this committee.

That is the wire that concededly was never sent.

THE CHAIRMAN. And, of course, under those circumstances it would probably not be the action of the committee. It may have been prepared by a clerk or someone else, and it may have been prepared by the committee. We just don't know.

Senator CASE. Mr. Chairman, might I bring to the attention of counsel that from an examination of that letter, it was not being presented, because it was evident in it that the dates referred to could not have been consistent with the text of the other correspondence that was introduced. To support my conclusion, I may say that that particular telegram had been prepared on the 14th of November; and the reason for that is that the first sentence refers to "the reply of your administrative assistant, received today."

Now, if you refer back to the exhibit which was marked exhibit 41 in the Hennings report, you will note that there is a paragraph which starts:

On November 14, 1952, the subcommittee received the following communication, dated November 10, 1952.

And then there follows the letter from Ray Kiermas to Mr. Cotter, to which reference has already been made.

If you put those two together, it makes clear that this telegram, which was prepared on the date that the reply from the administrative assistant was received, it must have been prepared on November 14, 1952. The thing which led me to suspect the telegram was the fact that it called for a reply not later than November 20, and yet it appears in sequence after the letter of November 21. Obviously, it could not have been properly in sequence, asking for an appearance on November 20, and appear after a letter of November 21. That was what led me to try to identify the date of it; and that, in turn, led to the discovery that the copy of the telegram was in the files and marked "not sent"; and that, in turn, led to the request of Senator McCarthy, or of you, as his counsel, to see if there was a telegram that intervened between November 21 and that date, and what telegram it was that was referred to in the letter by Senator McCarthy, which was marked exhibit 45—or rather, it was that telegram which is referred to apparently in the letter by Senator McCarthy, dated November 28, that led to the call for the telegram which you did produce, and which has previously been put in evidence.

Mr. WILLIAMS. The significant thing about the wire in the record is that, of course, it is contained, and from reading it, it appeared, as you pointed out, Senator Case, that it was sent on September 14; and in the report—

Senator CASE. Pardon me, November 14.

Mr. WILLIAMS. I am sorry; November 14. Then, the report, of course, makes a reference to this wire and suggests that Senator McCarthy was given an opportunity to appear on the 22d, 24th, and 25th of November; whereas we now find that the wire was sent on November 21, that it was sent to a place where Senator McCarthy was not, and that it gave him an opportunity to appear "tomorrow or Monday or Tuesday." Tomorrow being Saturday or Monday or Tuesday, whereas, in fact, he did not get it until November 28.

Why I think this is significant is because the letter of November 21 and the wire of November 21 are the first requests by this committee of the Senator to appear. The charge is here that he failed to comply with the request of the committee to appear. We find that there was no request that was communicated to him, wherein he was given a date to appear which he could comply with. That is why I offered this; and I think it is most relevant and germane to this particular charge.

The CHAIRMAN. You mean the telegram that was unsent?

Mr. WILLIAMS. No; I mean the telegram that was sent, Senator.

The CHAIRMAN. Oh, received?

Mr. WILLIAMS. Or received 7 days later, because they sent it to a place where he was not.

The CHAIRMAN. I am talking about the fact that the committee received it, not that somebody else received it; and, as I say, we received that in evidence.

Mr. WILLIAMS. Yes.

The CHAIRMAN. No matter where it was sent to, it is in the record.

Mr. WILLIAMS. That is correct.

The CHAIRMAN. And the other was not accepted in evidence—was not even offered.

Mr. WILLIAMS. That is correct. I was just pointing out what I considered to be the significance of these wires. I should now like to offer—

Mr. CHADWICK. Mr. Williams, do you recall that, at the time we were covering this, I stated that I was unable to accept the endorsement on that telegram as proof positive that it had not been sent, and I reserved the right—and I reserve it now—if further reference comes up to it, to produce it at the time, before us? And I will state to you that I have not yet found any other evidence of its sending.

Mr. WILLIAMS. In other words, you are saying, I take it, Mr. Chadwick, that you still may want to offer evidence that this mysterious wire, of no date, which appears on page 99, may have been sent?

Mr. CHADWICK. Yes, sir; but that, at some time tomorrow or the day after, if you wish to show it to the committee, I assure you it would be within its power to consider it. I assure you we will do that. At any rate, I hope the committee will pursue the thing further.

The CHAIRMAN. At one stage in this proceeding, I think there was an opportunity to stipulate that these letters had been sent, but counsel did not accept the stipulation.

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. In view of the fact that the telegram—what purports to be a telegram—has been read into the record, and the question was raised with regard to the use of the word “prevent,” at one point in the telegram, and I think it is only fair to point out that a copy of the telegram—which is not a copy, but which is its original typewritten copy, which is marked “not sent,” which was obtained from the files of the committee—at that point it uses the word “reflect”; so that it reads:

“Would appear to reflect the wishes, disregarded by you,” and so forth. And then I call attention to the fact that on page 99 of the printed form of the purported telegram, the word “prevent” appears directly above—or, let me say, the words “to prevent”—appear directly above the words “to prevent disclosure of the facts,” and it seems a fair deduction, to me—and I have read proof of copy at different times—that actually that is a typographical error there, in that the words “to prevent” are put in that line of type, whereas the copy from which it apparently was obtained would read, “to reflect.”

I do not know that this is material, but in view of the fact that we are trying to straighten out the record here, I think that should be called to the attention of the committee.

The CHAIRMAN. All right. Proceed.

Mr. WILLIAMS. I will ask you now, Senator, so there will be a record on this, whether or not you have received, at anytime, this wire which appears as exhibit No. 42 in the Hennings-Hayden-Hendrickson report.

Senator McCARTHY. The answer is “No.”

Mr. WILLIAMS. At no time?

Senator McCARTHY. Right.

Mr. WILLIAMS. Did you ever receive a request to appear before this committee, after the wire that you got on November 28, which gave you dates of November 22, 24, and 25?

Senator McCARTHY. The only request I ever received to appear before the committee was a wire sent to Appleton, Wis., where I was not, incidentally. I received it when I got back to Washington on the 28th. The time limit for my appearance was, I believe, the 25th; so I could not have complied with this. I received no other request at anytime to appear before this committee.

I might say that Mr. Cotter, on the committee—

The CHAIRMAN. That, of course, is hearsay. That last statement, and it will go out.

Senator McCARTHY. Well, let me say, Mr. Chairman, I did not receive that wire that was sent on the 21st; to the best of knowledge, I was up deer hunting, up in northern Michigan. I could not receive the wire. My letter indicates I received it on the 28th, which was 3 days after the time limit they set. So that the only request I ever received to appear was during a 3-day period of time when I could not possibly have appeared. That is the only request to appear.

The CHAIRMAN. Well, of course, you said all that once before. It will all be stricken out, except what you have stated in your last statement.

Mr. WILLIAMS. Now, did you answer this wire, which has been identified by Mr. Chadwick, dated November 21?

Senator McCARTHY. No, I did not answer the wire offered by Mr. Chadwick, because I never received that. You have a wire, Mr. Williams, which I answered, which as received—which was sent to Appleton, mailed to my office in Washington. I answered that wire. I do not believe that has been read into the record. I said:

I just received your wire of November 22, in which you state you would like to have me appear before your committee between November 22 and 25. As you were informed by my—

Senator CASE. Mr. Chairman.

The CHAIRMAN. Will the Senator from Wisconsin yield to the Senator from South Dakota for an observation or to ask a question?

Senator McCARTHY. I yield.

Senator CASE. I simply wish to point out that Senator McCarthy said that he had not read the letter or telegram that was read by Mr. Chadwick, and actually he did not receive the telegram that was offered by Mr. Chadwick. Mr. Chadwick did not offer the letter or the telegram that appears in the Hennings-Hayden report. At the time, Mr. Chadwick called attention to the fact that he was not to appear—

Senator McCARTHY. Just so there is no confusion, I did not receive the wire marked "not sent." I received the wire which we have offered.

Senator CASE. And that is the wire which Mr. Chadwick offered.

The CHAIRMAN. And that was produced by you, Senator.

Senator McCARTHY. I did not know Mr. Chadwick offered that.

The CHAIRMAN. Yes, it is in the record.

Senator McCARTHY. I am sorry. I am sorry I did not know he had offered that.

Mr. CHADWICK. I call attention to the fact that the telegram seems to be dated the 21st as if from Washington, and on a receipt stamp, it is in Wisconsin, on the 22d. I think, when you refer to a telegram of the 22d, which is the exact date of the telegram, you are necessarily referring to a telegram dated Washington, November 21.

Senator McCARTHY. Yes, sir. May I apologize, Mr. Chadwick. I didn't know you had offered that wire.

I just received your wire of November 22 in which you state you would like to have me appear before your committee between November 22 and 25.

As you were informed by my office prior to the time you sent this wire, I was not expected to return to Washington until Thursday, November 27, on which date I did return.

Sincerely yours,

This was sent to Hennings.

May I say, Mr. Chairman, this was the only request that I ever received at any time to appear before the committee.

It was sent to Appleton. I was not in Appleton. I did not receive it until the 28th. Therefore, I could not possibly have appeared, and they never extended to me any subpoena or order to appear after that time.

Mr. CHADWICK. Mr. Williams, will you tell me the date of that letter you just read again?

The CHAIRMAN. And will you place the copy in the record?

Mr. WILLIAMS. November 28, 1952.

The CHAIRMAN. I take it you have a carbon copy of that?

Mr. WILLIAMS. That is what I have.

The CHAIRMAN. Place that as an exhibit so we will have the continuity.

Have you marked it?

We will place it in evidence at this point as McCarthy exhibit No. 4.

McCARTHY EXHIBIT No. 4

NOVEMBER 28, 1952.

Senator THOMAS C. HENNING, JR.,

*Chairman, Subcommittee on Privileges and Elections,
Senate Office Building, Washington, D. C.*

DEAR SENATOR HENNING: I just received your wire of November 22 in which you state you would like to have me appear before your committee between November 22 and 25.

As you were informed by my office prior to the time you sent this wire, I was not expected to return to Washington until Thursday, November 27, on which date I did return.

Sincerely yours,

JOE McCARTHY.

Senator McCARTHY. Mr. Chairman, I assume we can receive back all of these exhibits because I assume I will be investigated again after this committee is through.

I would like to have them back.

The CHAIRMAN. I can't bind anyone in the future as to whether you will get them back or not, but I assume, if you are investigated again they will be on hand.

Senator McCARTHY. Thank you.

Mr. CHADWICK. May I inquire from the stenographer whether he has identified the letter just read by Senator McCarthy from copy, a letter dated November 28, 1952, as exhibit 3, McCarthy?

The REPORTER. I have not. I will.

Mr. WILLIAMS. At any time did you receive a request to appear before or after these two exhibits, a letter and a wire?

Senator McCARTHY. I never received a request either before or after this wire.

Mr. WILLIAMS. At any time did you receive a subpoena before or after November 21 and 22?

Senator McCARTHY. I did not.

Mr. WILLIAMS. Did you have any conversations with Senator Gillette regarding a subpoena?

Senator McCARTHY. Yes, I did.

Mr. WILLIAMS. What did you tell him—

The CHAIRMAN. Now, first—

Mr. WILLIAMS. Regarding the subpoena?

The CHAIRMAN. Name the time and place, so we will have a record of it.

Senator McCARTHY. Mr. Chairman, I can't name the time. I can name the place.

The CHAIRMAN. You can give it with reference to the occurrences happening.

Senator McCARTHY. I talked to Guy Gillette on the floor of the Senate, told him that I would not appear unless I was ordered to appear, or subpoenaed. I forget which word I used. I told him I had no desire to appear before that committee and that his extending an opportunity meant nothing to me.

Mr. WILLIAMS. Mr. Chairman—

The CHAIRMAN. When was that, Senator, with reference to these last telegrams, the one in November 1952—

Senator McCARTHY. It would have been considerably before that time because it would have been during the session of the Senate while Gillette was chairman.

The CHAIRMAN. Well, it would have been in 1951 or 1952?

Senator McCARTHY. In 1952.

Mr. WILLIAMS. Mr. Chairman, I would like to pass into a new matter. I see the hour is late and I was wondering if you would recess at this time.

The CHAIRMAN. Just as a matter of housekeeping now, working out the schedule, are you in a position to tell us about how much more time you would require?

Mr. WILLIAMS. I think that we can complete this direct examination in maybe half an hour.

I would like to have an opportunity to go over some of these matters with the Senator. Maybe we can expedite that.

The CHAIRMAN. I see.

Some of the members of the committee want to make arrangements, some appointments.

Mr. WILLIAMS. We can do it tonight, if you want. I mean I am passing into a new matter, and we have been adjourning at this time. I didn't know what your disposition was.

The CHAIRMAN. If we could continue to sit a little longer, we would appreciate it.

Mr. WILLIAMS. All right.

The CHAIRMAN. However, if it is going to work a hardship on you, we will recess now.

Senator McCARTHY. It will not.

The CHAIRMAN. Proceed, then.

Mr. WILLIAMS. Did you have a conversation with Senator Hendrickson regarding the report that was filed by this committee?

Senator McCARTHY. I did.

The CHAIRMAN. Name the time and place.

Senator McCARTHY. Pardon?

The CHAIRMAN. I say, give us the time when this happened, and the place where it happened.

Senator McCARTHY. It was the night the report was filed. I don't recall that date.

The CHAIRMAN. Was that in January, January 9, 1953?

Senator McCARTHY. I don't recall the date the report was filed, Mr. Chairman, but I called in the night the report was filed and talked to him over the phone.

Mr. WILLIAMS. That was January 2, 1953, Mr. Chairman.

The CHAIRMAN. January 2?

Mr. WILLIAMS. Yes.

The CHAIRMAN. You mean the date of this conversation?

Mr. WILLIAMS. Yes, sir. The date the report was filed, as I understood your——

Senator McCARTHY. That was the date of the conversation.

Mr. WILLIAMS. What conversation did you have with Senator Hendrickson regarding the report?

Senator McCARTHY. I called Bob up and pointed out to him that they were stating facts that were wrong, and I asked him whether or not he was going to sign that report.

I told him I thought it was completely dishonest to sign a report that was factually wrong, that I didn't argue with any conclusions which he arrived at based upon correct facts, but I didn't like to have him state the facts improperly.

At that time he said he was signing it, but that he would not agree—and I think I can quote him verbatim, because it impressed me very much—that he would not agree insofar as the report differed from the proven facts.

Mr. WILLIAMS. He would not agree. What do you mean by that?

Senator McCARTHY. In other words, he would sign the report, but that he would not agree with it insofar as it differed from the proven facts.

I thought this was a fantastic position for a man to take in a semi-judicial position, who says, "I will sign the report," meaning I approve of it, but then saying, "I do not agree insofar as it differs from the proven facts."

I said to him, "Bob, have you read the report? Why don't you sign a minority report, then, pointing out where the facts are wrong?"

And he said, "I haven't time to read the report as of now."

Mr. WILLIAMS. Thereafter did you make the remark that has been put in evidence in this case concerning Senator Hendrickson?

Senator McCARTHY. I either made that remark, or one substantially the same as that.

Mr. WILLIAMS. When that was made, were you referring to what he had told you on the telephone concerning his actions in relationship to this report?

Senator McCARTHY. Yes, yes; I was, and I referred directly to his position on that report.

Mr. WILLIAMS. I would like to offer at this time, Mr. Chairman, the Congressional Record, or, in the alternative, to ask this committee to judicially notice the Record insofar as Senator Flanders' remarks are concerned concerning Senator McCarthy on June 1, June 11, July 20, of 1954.

I have no desire to burden the committee by reading that material, but I think it is germane here in consideration of the issues involved in the fourth charge.

The CHAIRMAN. May I ask if you have reference now to the speeches that Senator Flanders made on the floor of the Senate while the McCarthy-Army controversy was being heard?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. You are not asking for permission to have them all printed in the record, are you?

Mr. WILLIAMS. Well, I was asking for that permission in lieu of reading them here.

The CHAIRMAN. I am inquiring as to—

Mr. WILLIAMS. I don't like to add to the size of this record, but I feel that they are so germane to the issues here that they should be before this committee when it makes its consideration of these charges.

The CHAIRMAN. There may be some doubt as to their relevancy but I think on the theory that you seem to be moving on, on the provocation—is that the guide you have in mind?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. I think that while this committee may possibly—I can only speak for myself, however—may be in some doubt on the weight to be given to the charge with respect to Senator Flanders, at the same time we should either have it in the file or in such a way in the record that there won't be any question about where the matter is stated and so that it can be easily referred to by the Senate.

Senator CASE. May I make a suggestion?

I would suggest that the speech of Senator Flanders, or speeches, if it was more than one, which antedated in point of time the remark which Senator McCarthy is said to have made about Senator Flanders in one of the charges, be put in. At least, I think the record should include the speech by Senator Flanders which was made before Senator McCarthy made the remark attributed to him. I don't know if the record needs to be burdened with the speech made afterward.

The CHAIRMAN. I understood they were all made before.

On the theory that you are offering them, that they were provocation, it would have to be before to be—

Mr. WILLIAMS. My recollection is, Senator Case, that the newsman who testified in here, testified that he showed the final copy of the speeches to which I have referred to Senator McCarthy before the colloquy took place which has been read into evidence here.

Senator CASE. Anything that was heard before.

Mr. WILLIAMS. I realize that.

Senator CASE. To support the question of provocation. I was under the impression that Senator McCarthy's alleged statement was made fairly early during the exchange.

Mr. WILLIAMS. I have not offered the numerous speeches that Senator Flanders has made, nor the press releases he has issued each day

during the hearing because I felt that only things that antedated this were germane.

The CHAIRMAN. The Chair understood that they did antedate.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. I am willing to admit them. The only thing I was asking about is the mechanical job of getting them before the Senate. They are not too long and we can have them included as part of the record and save all the argument.

They will be received.

(The speeches referred to are as follows:)

STATEMENT OF SENATOR RALPH E. FLANDERS ON THE FLOOR OF THE SENATE
JUNE 1, 1954, PAGES 6976-6977, DAILY RECORD

COLOSSAL INNOCENCE IN THE SENATE OF THE UNITED STATES

Mr. FLANDERS. Mr. President, I propose for a few minutes to address this body on the subject of the colossal innocence of the junior Senator from Wisconsin [Mr. McCarthy].

I am not using the word "innocence" in the meaning of freedom from guilt for no question of guilt is involved. Rather the meaning is that of the blithe heedlessness of the young, who blunder innocently into the most appalling situations, as they ramble through the world of adults. Perhaps the best illustration of this kind of innocence is to be found in a popular cartoon series published daily under the title "Dennis the Menace."

Our busy Senator does get us adults into all kinds of trouble. His constructive activities consist largely in pulling personalities out of the FBI files and displaying them under the television lights. This is certainly a labor-saving operation, but it is not his only activity. Besides this, and while doing this, he spreads division and confusion wherever he goes. Note, for instance, the foreboding he inspires in our fellow citizens of Jewish blood and faith. Among them this is well-nigh universal, in spite of the fact that some of his closest associates are Hebrews. In seeking the origin of this foreboding, I have been led to remember the part the Senator played in the investigation of the Malmedy massacres, and the strange tenderness he displayed for the Nazi ruffians involved.

Perhaps this would not have been enough to perpetuate foreboding, but his anticommunism so completely parallels that of Adolf Hitler as to strike fear into the heart of any defenseless minority. We should always remember, by the way, that communism, nazism, and other dictatorships resemble each other far more closely than any of them resembles the free world into which we were born, and in which we hope that our children and grandchildren will live.

It was not the Jews alone who had reason to be troubled. The former chief of staff of the Senator's committee, without a word of rebuke from his superior, charged the Protestant ministry with being, in effect, the center of Communist influence in this country. Here the attack was on a vigorous, indignant majority, and the chief of staff had to go.

But the ghost of religious intolerance was not laid. Clearer and clearer evidence came to light of the danger of setting church against church, Catholic against Protestant. At a recent communion breakfast of the New York police force, the Senator made a characteristic speech, blaming the Pentagon for not compelling the release of the remaining prisoners of the Chinese Communists. He did not say how this could be done short of renewing the war. Then he referred to his own proudest achievement—the detection of the pink dentist. Loud cheers from most of the audience—others silent.

Then Monsignor McCaffrey went into a eulogistic oration on the public service of our Senator. More cheers and silences.

Cardinal Spellman entered during the Monsignor's introduction and shook hands with our Senator. He arrived late and left early, but he did shake hands. Did this mean that the imprimatur of "nihil obstat" had been set by the church on these debonair campaigns to divide Americans from each other on religious lines? It looked like a pretty serious business.

But soon, thank God, from Chicago another voice was heard. It was that of a high and respected member of the Catholic Church, Bishop Sheil. He said that our Senator is doing more harm than good, and is dividing the United States

instead of uniting it in a cause that of itself is supported by every good citizen. Continuing, the bishop said:

"An America which has lost faith in the integrity of the Government, the Army, the schools, the churches, the labor unions, and most of all an America whose citizens have lost faith in each other—such an America would not need to bother about being anti-Communist; it would have nothing to lose.

"Such an America—"

He added—

"would have nothing to recommend it to freedom-loving men—nothing at all, not even the shining image of its victorious junior Senator from Wisconsin."

Thus it became evident that Dennis the Menace had driven his blundering ax deep into the heart of his own church.

His success in dividing his country and his church is paralleled by his unparalleled success in dividing his own party. While only a minority leader, his following is faithful and loud. This again raises uncomfortable comparisons with dictators elsewhere in the world. Not so long ago our Senator made one—just one—Republican speech. It was extreme, but it contained some painful truths. There were hopes that he might rejoin the party. But he soon dissipated these hopes, and instead resumed his ax-happy efforts to split it.

He has achieved the incredible success of persuading Republican Senators into a detailed and relentless search for some significant evidence of subversions in the Republican administration—and this in an election year. The search has no limits in minuteness or altitude. It reaches into the White House itself.

The cooperating group in the Senate is not large. It is not completely hypnotized. It is led on by the pitiful hope that some magic means may be found whereby Dennis the Menace will be transformed into a Republican asset.

Meanwhile, the investigation goes on and on. There are new synthetic and irrelevant mysteries served up each day, like the baker's breakfast buns, delivered to the door hot out of the oven. But the committee has not yet dug into the real heart of the mystery. That mystery concerns the personal relationships of the Army private, the staff assistant, and the Senator.

This hubbub centers on the Army private. What is it really all about? His usefulness as an investigator is continually asserted, but never documented. Let him also be investigated. When he is released for committee work, what does he do hour by hour? Whom does he see? What material does he analyze? What does he report? These questions are important and unanswered.

Then, there is the relationship of the staff assistant to the Army private. It is natural that he should wish to retain the services of an able collaborator, but he seems to have an almost passionate anxiety to retain him. Why?

And, then, there is the Senator himself. At times he seems anxious to rid himself of the whole mess, and then again, at least in the presence of his assistant, he strongly supports the latter's efforts to keep the Army private's services available. Does the assistant have some hold on the Senator? Can it be that our Dennis, so effective in making trouble for his elders, has at last gotten into trouble himself? Does the committee plan to investigate the real issues at stake?

Let us now leave these interesting domestic details and look at the worldwide strategy of communism. Let us begin by remembering that a while ago the Senator from Maine (Mrs. Smith) was denounced by the Moscow press as an enemy of the people—that is, of communism. I have myself been honored by the same accolade. If the junior Senator from Wisconsin has ever been attacked by Pravda, it has not come to my attention.

In every country in which communism has taken over, the beginning has been a successful campaign of division and confusion. Race is set against race, party against party, religion against religion, neighbor against neighbor, and child against parent. Until lately we have been free of that. We are so no longer.

We have marveled at the way in which the Soviet Government has won its military successes in Asia without risking its own resources or its own men. It has been willing to continue the conflict until the last Chinese Communist is killed.

What we are now seeing is another example of economy of effort and expansion of success in the conquest of this country for communism. The preliminary campaign is successfully underway. One of the characteristic elements of Communist and Fascist tyranny is at hand, as citizens are set to spy upon each other. Established and responsible government is besmirched. Religion is set against religion, race against race. Churches and parties are split asunder. All is division and confusion.

Were the junior Senator from Wisconsin in the pay of the Communists, he could not have done a better job for them.

This is colossal innocence, indeed.

STATEMENT OF SENATOR RALPH E. FLANDERS ON THE FLOOR OF THE SENATE,
JUNE 11, 1954 (PP. 7594-7595, DAILY RECORD)

IN CONTEMPT OF THE SENATE

Mr. FLANDERS. Mr. President, there has come to my hands in the last few days a committee print of the investigations of Senators Joseph R. McCarthy and William Benton, pursuant to Senate Resolution 187 and Senate Resolution 304 of the 82d Congress. This is not the first time that I have heard of this material. A bootlegged edition was sent me many months ago, but since I do not patronize bootleggers in any commodity I paid little attention to it. This publication, however, was official, and its contents are such that I feel they must be taken into account.

The charges against the junior Senator from Wisconsin were summed up in six questions, which the committee worded, as follows:

"Whether under the circumstances it was proper for Senator McCarthy to receive \$10,000 from the Lustron Corp.

"Whether funds supplied to Senator McCarthy to fight communism or for other specific purposes were diverted to his own use.

"Whether Senator McCarthy used close associates and members of his family to secrete receipts, income, commodity and stock speculation, and other financial transactions for ulterior motives.

"Whether Senator McCarthy's activities on behalf of certain special interest groups, such as housing, sugar, and China were motivated by self-interest.

"Whether loan or other transactions Senator McCarthy had with Appleton State Bank or others involved violations of the tax and banking laws.

"Whether Senator McCarthy violated Federal and State Corrupt Practice Acts in connection with his 1944-46 senatorial campaigns or in connection with his dealings with Ray Kiermas."

I now quote from the first two full paragraphs on page 10 of the subcommittee report:

"In Senate Resolution 187, this subcommittee had before it, at the outset, merely the issue of determining the merits of Senator Benton's charges relating to Senator McCarthy's fitness to sit in the Senate. As indicated, Senator McCarthy was invited to attend subcommittee hearings on six occasions to present his explanations of the issues raised in Senate Resolution 187 and the investigation made pursuant thereto. Three of the invitations were extended prior to the Senate vote on April 10, 1952, and three invitations were extended subsequently. Senator McCarthy should have known that the most expeditious way to resolve the issues would have been to appear before the subcommittee to make such statements and refutations of the charges as he saw fit. For reasons known only to Senator McCarthy, he chose not to accept this course, but to charge that the allegations were a smear and that the subcommittee was dishonest and doing the work of Communists. Between October 1951 and April 1952 he refused to honor the invitations of the Subcommittee on Privileges and Elections on the grounds that it lacked jurisdiction and that the members of said subcommittee were dishonest in their motives for insisting on any investigation, which, he contended, was solely because of his exposure of Communists in Government. Subsequent to April 10, 1952, and in the face of the Senate's 60-0 vote confirming the integrity of the members of the subcommittee and its jurisdiction to investigate the matters involved Senator McCarthy continued to reject the invitations of the subcommittee to appear before it for the purpose of presenting testimony in explanation of the issues raised by the investigation, and continued his attack upon the members of the subcommittee.

"Such action on the part of Senator McCarthy might appear to reflect a disdain and contempt for the rules and wishes of the entire Senate body, as well as the membership of the Subcommittee on Privileges and Elections."

It is surely clear that the junior Senator from Wisconsin treated the members of the subcommittee, Messrs. Hennings, Hayden, and Hendrickson, with contempt. The Senate, on April 10, 1952, by a 60-to-0 vote, confirmed the integrity of the members of the subcommittee and its jurisdiction to investigate the matters involved. Therefore, the original contempt of the junior Senator from Wisconsin extended to the whole Senate.

It is no defense to call the charges a smear. A smear is a most annoying thing and one which is perhaps—I would not speak definitely—not unknown to the junior Senator from Wisconsin. But there is this about a smear: It can be removed by a dry-cleaning process which involves a vigorous application of the truth. That process the Senator was unwilling to apply.

Mr. WELKER. Mr. President, will the Senator from Vermont yield to me?

Mr. FLANDERS. I yield.

Mr. WELKER. Does the Senator from Vermont have any information that the junior Senator from Idaho served also on that committee?

Mr. FLANDERS. He was a member of that committee, as I recall.

Mr. WELKER. Does the Senator from Vermont realize that the Senator from Idaho resigned from that committee on the ground and for the reason that it was a political smear?

Mr. FLANDERS. I would ask the Senator from Idaho to wait until he hears my dissertation on the subject of smearing.

Mr. WELKER. I shall be happy to do so. I am sorry I interrupted the Senator.

Mr. FLANDERS. That is quite all right.

Mr. President, as I was saying, there is this about a smear: It can be removed by a dry-cleaning process which involves a vigorous application of the truth. That process the junior Senator from Wisconsin was unwilling to apply. The smear remains. Of course, there are some character discolorations which are not smears. They may be the outward evidence of inner corruption. Lady Macbeth found this out when she was smeared with the blood of Duncan and cried out:

"All the perfumes of Arabia will not sweeten this little hand."

The Senator has quite evidently placed himself in the contempt of his peers and will so remain until he dry cleans his smears. He should be given a reasonable length of time to purge himself by this means before the Senate takes further action.

To indicate what the action should be, I am sending to the desk at this time a motion which I will ask the clerk to read "distinctly with a loud voice that the people may hear," as the minister is admonished to read in the ancient English prayer book. For this occasion we want no rapid, indistinct mumbling of the words.

The PRESIDING OFFICER. The motion will be read.

The LEGISLATIVE CLERK. It is moved—

"That Senator McCarthy be separated from the chairmanship of the Committee on Government Operations, and furthermore be prohibited from being chairman or vice chairman of any subcommittee thereof."

Mr. FLANDERS. Mr. President, it is intended that the motion lie on the table until sufficient time has been given for the Senator from Wisconsin to purge himself of contempt, by answering specifically and in detail the charges in the numerous questions I have read. To allow this time is only fair to him.

When I call up the motion, I shall hope for a goodly show of hands on this side of the aisle in support of the request for a yea-and-nay vote.

The PRESIDING OFFICER. Without objection, the motion which will be reduced to writing in the form of a resolution, will lie on the table, as requested by the Senator from Vermont.

The motion of Mr. Flanders was ordered to be printed in the form of a resolution (S. Res. 261) and to lie on the table, as follows:

"*Resolved*, That Senator McCarthy be separated from the chairmanship of the Senate Committee on Government Operations and furthermore be prohibited from being chairman or vice chairman of any subcommittee thereof."

Mr. WILLIAMS. Mr. Chairman, this morning there was a colloquy concerning certain portions of our defense which were ruled out. I do want to offer certain factual information on one of the charges that was made here, namely, the charge regarding the so-called FBI document. Insofar as I can proceed without transgressing your ruling, I shall do it. I shall address myself to the charge of spuriousness of this document and interrogate this witness on that subject because I feel that does not transgress in any way your ruling.

The CHAIRMAN. What you have brought before us at the time was not on that question at all.

Mr. WILLIAMS. No.

The CHAIRMAN. You may proceed.

We will rule on the evidence as it is presented.

Mr. WILLIAMS. Senator, the document which you held in your hand and which you passed to the committee counsel, Ray Jenkins, in the

Army-McCarthy hearings on May 4, 1954, I ask you to examine that, sir.

Is that it?

Senator McCARTHY. It is unnecessary. I have examined it in detail.

Mr. WILLIAMS. When you passed that to Mr. Jenkins, did you pass it to him as a document which purported to give certain information which you in fact had received in 1953?

Senator McCARTHY. Yes, that's right.

Mr. WILLIAMS. Does this document on its face show that materials have been deleted which related to security information and classified information?

Senator McCARTHY. It does very definitely do so.

Mr. WILLIAMS. Now, I direct your attention to paragraph 5 of this document, the one alluded to by Mr. Collier as the one paragraph wherein the first change takes place in his comparison with the memorandum in the FBI files, and I ask you if in the fifth paragraph it does not clearly indicate that materials have been omitted of a security nature.

The CHAIRMAN. Just before you answer that, the document you are now talking about is the one that has been marked "Classified"?

Mr. WILLIAMS. Yes.

The CHAIRMAN. And was ruled to be classified in the other hearing, the Army controversy hearing?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Just a moment. And is that the two and a fourth page document?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. The reason I am calling this to your attention, I am going to permit Senator McCarthy to give his interpretation of it as long as he does not reveal any so-called classified information. Obviously, we cannot cross-examine him as to whether he is giving a correct interpretation of the letter because if it is classified, we cannot even examine it.

Mr. WILLIAMS. I know of no way, Senator—

The CHAIRMAN. And the evidence so far that has been placed in the record from the Army-McCarthy hearing record indicates that it was classified and so considered by the Attorney General and by Mr. Hoover of the FBI.

Mr. WILLIAMS. I know of no way to defend the charge of the spuriousness of this document—

The CHAIRMAN. I am not objecting to your proceeding that way, but I am pointing out that we will be unable to cross-examine on that point.

Mr. WILLIAMS. Now—

Senator ERVIN. Mr. Chairman.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. If Mr. Williams will pardon the suggestion, it would tend to defend the charge of spuriousness, to show how Senator McCarthy came into the possession of these documents and to show that he accepted it as a valid document—

Mr. WILLIAMS. I intend to ask those questions, Senator Ervin, if I am permitted to conduct the examination. I was just about to go into that aspect of the case.

Of course, Senator McCarthy will be available for full cross-examination on that subject. That is the purpose of my asking these questions now so that there can be a full cross-examination on that.

The CHAIRMAN. Of course, under the rules of this committee, it is more or less informal. Whether it is presented at all or not, the committee, might want to know about it anyhow, even if you didn't offer it.

Mr. WILLIAMS. I appreciate your position, sir, and I intend to cover that ground.

Now, I ask you again whether or not this document——

The CHAIRMAN. Just a moment.

I take it for granted, of course, the press is very curious about this, but I hope they will not attempt to take a look at it, because if it is marked classified even though it was testified here that there were 35 copies, possibility of 35 copies circulated, we are still going to observe, do all we can to keep it from being—just a moment—being read by people who haven't any right to read it.

We are going to observe the ruling of the other committee on that and to follow their steps.

I am not reflecting on anybody, but I just wanted to make that clear.

Mr. WILLIAMS. I ask you whether or not the first paragraph to which Mr. Collier referred when he said that there had been changes in the contents of this document in comparison with the FBI document, that the Department of Justice does not reveal that the security information therein has been deleted.

Senator McCARTHY. Yes, sir; that statement on the background of a certain individual has been deleted. It is a parenthetical expression.

May I say, Mr. Williams, in answer to what the Chair said, that Mr. Hoover has never classified this document. Mr. Hoover classified the 15-page document which contained the security information.

This document has never been classified by Mr. Hoover.

The CHAIRMAN. The Attorney General passed on it and said it was classified and refused to permit it to be used or disclosed.

Mr. WILLIAMS. I ask you——

The CHAIRMAN. And we are relying on that. We are not trying to go back of it and start all over again. We take what the other committee did as evidence.

Mr. WILLIAMS. Now, Mr. Collier's testimony—and this is a matter of record in this proceeding—is that the first four paragraphs were in all respects identical and that there was a change in paragraph 5.

That is why I addressed my question to Senator McCarthy as to whether security information had been deleted from paragraph 5.

Now, with respect to paragraph 6, Mr. Collier's testimony was that that was in all respects identical with the document to which Mr. Hoover compared it.

Is that right?

Senator McCARTHY. That's right.

Mr. WILLIAMS. Now, I ask you whether or not paragraph 7 does not clearly indicate on its face that security classified information has been deleted therefrom?

Senator McCARTHY. By paragraph 7, Mr. Williams, you refer to this section?

Mr. WILLIAMS. Yes.

Senator McCARTHY. Yes, it shows that all of the security information in regard to the Fort Monmouth radar employees has been deleted.

Mr. WILLIAMS. Then I call your attention, sir, to paragraphs 8 and 9 and the testimony in the hearings have been that they were in all respects identical with the paragraph in the document to which they were compared; is that correct?

Senator McCARTHY. That's correct. And let me say this, Mr. Williams, that I hope the members of the committee examine this document. They will find that there is no security information in it. They will find that this is a warning of subversion at the radar laboratory.

Mr. WILLIAMS. I don't see, Mr. Chairman—

The CHAIRMAN. Question has been raised as to the propriety of the Senator reading certain portions. It has been ruled in the other committee that it was classified. It was regarded as a classified document.

The Attorney General said it could not be made public and I do not think the committee is going to read this document under the circumstances.

Mr. WILLIAMS. Then I ask, Mr. Chairman, if at this time, this committee will not look at this, I don't see how it can pass upon whether it is spurious or not. I just don't know how to defend our charge without showing it is, showing you that it is not spurious, that it purports to be just what it is, something with the security and classified information deleted from it.

And it is clearly deleted from it and there was no attempt to indicate otherwise, because that is right on the face of it.

The CHAIRMAN. Well, of course, I say all of this I could strike out as being completely incompetent because the document itself would speak for itself, but under the peculiar circumstances pertaining to this entire transaction and the document itself, the committee does not feel it ought to do that. We allowed you to testify in a general nature with respect to it.

Now, we will take under advice the matter you have offered, if you have offered it. Evidently you are going to offer it into evidence or you are wanting to read it.

Mr. WILLIAMS. I want to read it, sir, because there is no security information in it.

The CHAIRMAN. Are you offering it in evidence?

Mr. WILLIAMS. Yes.

The CHAIRMAN. At this moment I will say, on behalf of the committee, that we will take the matter under advisement.

Mr. WILLIAMS. Thank you.

The CHAIRMAN. And in the meantime, before we decide whether to read it or not, the possession of the document will be left where it came from. Senator McCarthy, in his possession.

Now, if the committee has another view on that after our deliberations in executive session, we will make that known.

Mr. WILLIAMS. I may say to you, Senator, and it seems to me that I am making an admission that nobody else made, that I have the document in my possession, and I have to say to you that I have read it because I knew not how to defend this document against the charges,

and I can tell you that everything that is of a classified or security nature is manifestly deleted herefrom, and I urge you with all the power in my command to look at it.

I do not, of course, ask you to drop the charges of the spuriousness of the document because the committee cannot look at it. I hope you will look at it so that this thing can be cleared up.

The CHAIRMAN. We have great respect for your judgment and your sincerity and honesty, Mr. Williams, in saying that we are not going to take a look at it even though you have made that statement. I hope you will not think we are reflecting on you.

Senator ERVIN. I want to say this to Mr. Williams. I think sometimes folks have got to know what a word means, in what sense they use the word. You used the word "classified." In other words, it might be susceptible to two meanings. The first is, it might be restricted to the method by which intelligence is obtained or it might mean both that and the information which is obtained as a result of it. In what sense do you use the word "classified" so that I can understand your position?

Mr. WILLIAMS. There are no investigative techniques revealed herein. There are no informants revealed here. There is no information here that in my opinion can in anywise affect the security of the country.

Senator ERVIN. Well, suppose the Intelligence Service, either the FBI or the Central Intelligence Agency, conducted an investigation by their techniques and discovered that John Doe in the Government was a Communist. Would that fact that John Doe was a Communist be classified information, or would merely the technique which they have used, by which they made that discovery, be classified information? I want your understanding.

Mr. WILLIAMS. I wouldn't say that the fact as to whether John Doe was a Communist would be classified.

I would agree with you, Senator Ervin, that the document and the FBI files which contained that information might well be classified.

Senator ERVIN. Do I understand you to mean, then, that the part of the document or report or data collected by the FBI that John Doe was a Communist would not be classified information?

Mr. WILLIAMS. No, sir. I say I will certainly readily agree with the position you are taking, Senator, that a document in the FBI files which contained the facts of Communist affiliation of Joe Doe or William Roe might very well be classified, and I would accede to that proposition.

Senator ERVIN. Is it your position that if I were a governmental employee and I had access to such a document and I copied a statement from the document that John Doe has been discovered to be a Communist, is it your position that what I said about it, that would not be classified information? I admit that the paper would be classified, but would the information be classified?

Mr. WILLIAMS. I will not make that statement. Certainly if I have access to information, as a Government clerk, to classified information, and I copy what is in fact classified information, it does not become less classified by reason of the fact that I simply copied it.

Senator ERVIN. Just explain it to me. Maybe my impression of it is not correct. Explain to me what you mean by classified information, so that I may comprehend it.

Mr. WILLIAMS. I think you and I mean the same thing. We mean information which affects the national security which has been restricted by Executive order and illustrative of which would be information containing investigative techniques, names of informants, names of individuals whose identity might thus not be known for one reason or another in the context of our national security considerations.

Senator ERVIN. In other words, what I am trying to get concrete, and an understanding of because I am not certain that I understand myself, but I have to understand your meaning to understand your position.

I understood from the testimony that was offered that some of these paragraphs were identical with paragraphs in some original document in the FBI.

Mr. WILLIAMS. Yes, sir.

Senator ERVIN. And that those paragraphs made some statements with reference to persons, alleged Communists, in the installation at Fort Monmouth.

Mr. WILLIAMS. Yes, sir.

Senator ERVIN. Then you use the word to mean that the result of the technique, when divorced from the technique, is not classified?

Mr. WILLIAMS. I think maybe I can say it this way simplest; I agree pretty much with Vice President Nixon in his statement wherein he said that he did not regard a certain FBI letter which was not complete and from which certain portions had been excerpted, when he said he did not regard it as classified because the investigative technique, the names of the informants, the modus operandi of the FBI was in no way revealed as a result of the excerpts which were taken from it. I think I pretty much subscribe to his view on that.

Senator ERVIN. My understanding of it is this: Suppose the FBI had documents, the first paragraph of which states that Joe Doe, a Communist, held a certain governmental position, and the second paragraph said that we found out that John Doe, a Communist, held an important position by tapping his wires.

According to your understanding, the first paragraph would not be classified information, but the second paragraph would.

Mr. WILLIAMS. I can well imagine that situation obtaining. We have a document and the conclusion of that document that is reached is that John Doe is a Communist, and then the background of the information on which the investigation had obtained is set out. We know this because we have interviewed A, B, C, D, E, and G, his neighbors. A says this; B says this; C says this; D says this; E says this; and then we have tapped his wires. We have put a mail cover on him. We have had him under surveillance.

I would wholeheartedly agree that all that would be classified information by any concept of the term. I think that the conclusion that is stated is an area which is more of a twilight zone by far. I do not think you can say with any certitude that that would be classified information on just the facts that you set out.

Senator ERVIN. Notwithstanding the fact that a document containing the two paragraphs might be so stamped by the FBI?

Mr. WILLIAMS. The document as a whole would be certainly classified, say, as confidential.

Senator ERVIN. Thank you.

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. I have in my hand the printed copy of Senate Report No. 2507 of the 83d Congress, 2d session, which is entitled "Report of the Special Subcommittee on Investigations for the Committee on Government Operations, United States Senate."

It is a report of the committee in the Army-McCarthy matter, and in the part of the report which is signed above the dated signature of August 21, 1954, signed by Senator Karl E. Mundt, as chairman; Senator Everett M. Dirksen; Senator Charles E. Potter; Senator Henry C. Dworshak; Senator John L. McClellan; Senator Henry M. Jackson; and Senator Stuart Symington. In other words, the part of the report which was signed or appears above the signatures of all members of the committee, I note this paragraph, and I present it to the attention of the counsel, because the counsel has been talking about the question of the spuriousness or the alleged spuriousness of the document.

Mr. WILLIAMS. What page are you reading from, sir?

Senator CASE. Page 76. This is the first full paragraph on page 76, the fifth line from the top of the page. It reads as follows:

The next morning Mr. Robert A. Collier, a member of Counsel Jenkins' staff, testified that he had been to see Mr. J. Edgar Hoover, who had examined the copy of the letter proffered by Senator McCarthy. On the basis of that examination, Mr. Hoover informed Mr. Collier that the McCarthy "copy" was "not a carbon copy or a copy of any communication prepared or sent by the FBI to General Bolling on January 26, 1951." (May 5, 1954) The FBI did have a copy of an interdepartmental memorandum prepared and sent to General Bolling on that date, but that copy and the McCarthy copy were "materially different in form." The FBI copy was a 15-page document; the McCarthy copy was 2¼ pages. The substance of the FBI copy and the McCarthy copy "contained information relating to the same subject matter and * * * in some instances exact or identical language appears in both documents." (May 5, 1954) Indeed, the McCarthy copy was identical in words and paragraphs and in the listing of names with the FBI copy. However, the FBI 15-page document made no evaluation of the information about these individuals, while the 2¼ page document did so.

That is the end of the paragraph. One question in my mind: I was hoping, while counsel was dealing with this question of authenticity of the document, that he would take up the question of the form of the document as bearing upon whether or not it was a true copy of an original true document prepared by the FBI or by any other competent investigative body.

Mr. WILLIAMS. I think that probably appears of record in the hearings. I, of course, have not seen the other document that has been referred to, but my recollection of the testimony is quite clear, that in form the document to which so much reference has been made, the 15-page document instead of being in letter form, is in memorandum form to Major General Bolling, Department of the Army, Assistant Chief of Staff, Washington, D. C., from J. Edgar Hoover, Director, FBI.

I am just giving you the form from my memory now. Whereas the 15-page document has that form, this document has the form of a letter. In other words, it has "Major General Bolling, Department of the Army, Assistant Chief of Staff, Washington, D. C., Sir:" and

then it has the name "J. Edgar Hoover, Director, FBI," appearing at the end, and the name as in the form of a letter.

Senator CASE. As in the form of a letter.

Mr. WILLIAMS. Yes, sir.

Senator CASE. With an address and a signature?

Mr. WILLIAMS. Yes, sir; and another change is this, that I believe that the 15-page document said "confidential via liaison," while this says "personal and confidential via liaison."

Now the rest of the document is identical in all respects with the 15-page document save only that materials have been excerpted from it, and this document shows on its face that those materials have been excerpted from it, so my point is, Senator, that it is not anything it does not purport to be.

In other words, it does not purport to be something it is not.

Senator CASE. You mean it does not purport to be a copy of an original letter?

Mr. WILLIAMS. No, sir; because it shows right on its face that these materials have been deleted, you see.

Senator CASE. Does the document you have in front of you have the word "copy" at the top in red letters?

Mr. WILLIAMS. Yes, sir.

Senator CASE. Is that a part of the imprint on the copy paper, or is that stamped on it?

Mr. WILLIAMS. It is part of the imprint on the paper.

Senator CASE. It is part of the second sheet notification.

Mr. WILLIAMS. Typical copy sheet but, parenthetically, in this document it is clearly shown that materials are deleted which appear in the document from which this was prepared.

So that my point is, this does not represent itself to be something that it is not, except as you pointed out, Senator, that the form is different. The form is different.

Senator CASE. It purports to be a copy of a letter rather than of a memorandum?

Mr. WILLIAMS. Yes, sir. Yes, sir.

In other words, if you call something that says "To" and "From," a memorandum, that starts out, "Sir," and is signed by the person from whom it comes, a letter, therein it is different.

Senator CASE. Oh, it is a different copy?

Mr. WILLIAMS. In form.

Senator CASE. I have in my hand a copy of an ordinary second sheet with the word "Copy" on it, and it appears on a piece of paper like that [indicating].

Mr. WILLIAMS. That is right.

I will be glad to show you this, Senator, after the hearing.

Senator CASE. I am in the same position as Mr. Jenkins.

The CHAIRMAN. Just one or two questions the Chair wants to ask and then he will yield to Senator Stennis, who would like to ask some questions.

I would like to ask of Senator McCarthy:

Is this the identical document which was exhibited and offered in evidence in the Army-McCarthy proceeding?

Senator MCCARTHY. It is. I am not sure it was offered in evidence. It was given to Secretary Stevens and he was asked whether or not this was a copy of something in the Army files.

I don't think it was offered in evidence.

The CHAIRMAN. Well, there was some examination——

Senator McCARTHY. It is the identical copy offered to Bob Stevens.

The CHAIRMAN. That you took out of your possession and handed to him, or had handed to him; is that right?

Senator McCARTHY. That is right.

The CHAIRMAN. Now, when there was some examination of it, there was an indication in the record that you had in your hand, you and Mr. Cohn, or somebody who was working with you, another copy of that same document.

Senator McCARTHY. No.

The CHAIRMAN. Was that a fact? Did you, or did you not, have such a copy?

Senator McCARTHY. We did not.

The CHAIRMAN. You were not using anything in your hands that purported to be a copy of this as the basis for your examination?

Senator McCARTHY. No.

The CHAIRMAN. Do you know whether there are any other copies of this in existence, or not?

Senator McCARTHY. The Justice Department asked for a copy.

The CHAIRMAN. Do you know it?

I asked you a question. Do you know it?

Senator McCARTHY. The answer is "Yes"; the Justice Department asked for a copy of this letter. We made a copy; gave it to the Justice Department.

The CHAIRMAN. That was to Mr. Brownell, himself?

Senator McCARTHY. It was given to one of the members of the staff of the Mundt committee, who was instructed to get it for Mr. Brownell.

The CHAIRMAN. I see.

I recognize Senator Stennis.

Senator STENNIS. Mr. Chairman, I wanted to ask Mr. Williams: Did I correctly understand you to say this document you have there on the table, now in Senator McCarthy's hands, has never been classified as a secret document, or confidential document? Is that correct?

Mr. WILLIAMS. Well, Senator, I would have to answer that question this way: The material which I sincerely believed are the classified portions of the original document have been eliminated and deleted from this.

So, I must answer that the parent document was classified, because Mr. Hoover said it was, but I must say to you it is my sincere opinion that that portion of that document which provided the basis for classifying the original document has been deleted.

Senator STENNIS. That question, leads then, to this primary question——

Senator McCARTHY. Could I interrupt there, Senator Stennis?

This would appear, from its face, to be a boiled-down version of an FBI document, which was used for the purposes of distribution.

As you know, when the FBI sends out a report that is classified, normally it is boiled down and the security matter deleted, and the balance of the document sent to the proper security officers.

If I were to guess about this. I would say this is the document that is in the files of the various Army security officers.

Senator STENNIS. The primary question is: Now, Mr. Williams, do you actually offer this document there, which we are talking about, in evidence here for the record?

The CHAIRMAN. That has been done.

Senator STENNIS. Is that your position?

The CHAIRMAN. That has been done.

Mr. WILLIAMS. I would say this: I sincerely believe, Senator Stennis, there is no classified information in this—there is no information in this document as it now stands—that affects the national security and, therefore, I offer it in evidence for this committee to look at in a consideration of the charge of spuriousness.

Senator STENNIS. Mr. Chairman, that puts the committee in this position here: Here is a document no one would look at on another committee and someone, a newspaperman, took it down to Mr. Hoover, the Director of the FBI, and he told him if he published it he would put him in jail; but still I notice he didn't take that document away from this columnist, and now we have it published here to Mr. Williams and he has offered to publish it to us.

I think we ought to get a ruling here. We are to pass on a document now that is in a sealed envelope in some Government department. I think we ought to settle this thing and get a ruling.

The CHAIRMAN. Senator, you are dead right and that is why I said, when the offer was made, we would take it under advisement, and all this has occurred since that time, if anyone can remember back when I said that.

Mr. CHADWICK. Mr. Williams, it may be you and I will share a professional responsibility with respect to this and, as the chairman said, I have great respect for your opinion. I would like to ask you this: Is it not your understanding that there is testimony before this committee now which establishes—not tends to show, but which establishes—that Mr. Hoover regards this as a classified document and that the Attorney General of the United States regards it as a classified document?

Mr. WILLIAMS. Are you referring to Mr. Winchell's testimony and his conversation with Mr. Hoover?

Mr. CHADWICK. No, sir; not at all. But in the testimony in this case derived from the testimony in the Mundt subcommittee.

Mr. WILLIAMS. Would you read to me that to which you have reference?

Mr. CHADWICK. It will take me a moment to do that.

Mr. WILLIAMS. I think I know—

Mr. CHADWICK. It seems to me you remember. Let me remind you—

Mr. WILLIAMS. I think Mr. Hoover wrote a letter or Mr. Brownell wrote a letter in which he stated he would not permit this letter to go into the previous record.

Mr. CHADWICK. Certainly he did. That is what I am talking about.

Mr. WILLIAMS. Yes.

Mr. CHADWICK. And, also, Mr. Hoover, as I understand it, said that this document, this one which you appear to hold in your hand, is a classified document.

Mr. WILLIAMS. Who said that?

Mr. CHADWICK. Mr. Hoover.

Mr. WILLIAMS. I think, Mr. Chadwick, you will find that Mr. Hoover said that the document in his files was a classified document.

Mr. CHADWICK. That is right, sir; but I think it will be found that he was also passing on the classified quality of this by reflected light, so to speak—

Mr. WILLIAMS. I don't think—

Mr. CHADWICK. Since it contained in identical form matter from the 15-page interdepartmental record, that it had the qualities of classification under their standard of confidential.

Mr. WILLIAMS. I gather, Mr. Chadwick, that what you are arguing to is that this may not be looked at because Attorney General Brownell has suggested to the last committee that it could not look at it.

Now, I have great respect, sir, for your professional opinion, too, and I ask you: How in the name of reason, can I defend the charge of spuriousness if this committee won't look at this document?

Mr. CHADWICK. That, sir, is not my problem, nor necessarily your problem.

The fact remains the same, that apparently under the laws of the United States we must investigate it—

Mr. WILLIAMS. In other words—

Mr. CHADWICK. Under whatever imposed classification it has received, and I merely ask you whether you remembered the Attorney General of the United States had ruled on it.

Mr. WILLIAMS. I know you take a cavalier approach to this, Mr. Chadwick, that it isn't your problem as to how we defend Senator McCarthy against the charges, but these are very serious charges to him and one of these charges is that this is a spurious document and it is easy for you to be cavalier and say, "I don't know how you are going to defend against it because I won't look at it, and I'll recommend the committee not look at it," but it presents a very serious problem to us, sir.

Mr. CHADWICK. Yes, sir.

Mr. WILLIAMS. And I don't know how to defend it—and I repeat it to you, Mr. Chadwick—unless this committee will take a look at this document.

I certainly can't believe that any rule of reason would say that six United States Senators couldn't be trusted to look at a 2½ page, 2½ year old, 3½ year old, maybe it is, document, which has no more information about the security of this country than these briefs that have been filed in this case.

Mr. CHADWICK. Mr. Williams, I said when I started that I realized we might have a common problem, that there might be two horns to the dilemma, on one of which you might be impaled, the other of which I might be impaled.

I merely wanted to clear up whether or not you remembered that the Attorney General of the United States had ruled, and I call your attention to the fact that I think Mr. Hoover also ruled, that this particular document was classified.

I do not say the latter with the assurance that I do the former, although I firmly believe it is true and it is a matter which you—you say cavalier—in your perfectly understandable expression of opinion might have seemed to have ignored.

Mr. WILLIAMS. I didn't get the last.

Mr. CHADWICK. I say it might well be, as it seemed to me, that your freely expressed opinion that there is no particular sanctity or protection around this paper might record the fact that this committee has in its files evidence that the Attorney General has ruled on it, and I think evidence that Mr. Hoover has ruled on it.

I don't wish to belabor the point.

The CHAIRMAN. Just a minute.

I am going to say now I think we have had considerable argument back and forth. The committee will take this under advisement, as I previously said. It has now been offered in evidence and we will have to make our decision.

We have not said we will or we will not. We will consider it.

Mr. WILLIAMS. If I may, I could ask one final question here, I think, and close up this case insofar as I can go by asking Senator McCarthy:

Was this given to you, sir, as a copy, an authentic copy, of the document when you received it?

Senator McCARTHY. Every document in the Army files, not in the FBI files, and I have every reason to believe that it was and is a copy of a document in the Army files.

May I just take 30 seconds, Mr. Williams, to point out that the importance of this document is that it shows that at the secret radar laboratories security information——

The CHAIRMAN. Well, now——

Senator McCARTHY. Was disregarded for——

The CHAIRMAN. Just a moment.

Senator McCARTHY. Year after year after year——

The CHAIRMAN. Just a moment, Senator.

Senator McCARTHY. And there was no security——

The CHAIRMAN. Until we rule on this, I think you should not make that statement.

We will go into the ruling on this.

We are not trying any security regulations up there. That is not a part of this investigation.

This I would regard as a divergence.

Senator McCARTHY. Mr. Chairman——

The CHAIRMAN. We will rule on this matter as best we can.

Senator McCARTHY. Mr. Chairman.

Mr. Chairman, may I ask: You say this is a diversion. I am accused of improperly taking a classified document.

The CHAIRMAN. I understand exactly.

Senator McCARTHY. May I just get my position, Mr. Chairman——

The CHAIRMAN. The counsel has been standing for a long time.

Senator McCARTHY. I considered your statement as a question. I think I have a right to answer it.

The reason this was taken—the reason I think it is important is not because it contains any security information——

Senator ERVIN. Mr. Chairman.

The CHAIRMAN. Just a moment.

Senator McCARTHY. May I finish, please?

The CHAIRMAN. Just a moment.

Senator McCARTHY. May I finish, please?

The CHAIRMAN. You may when Senator Ervin has stated his position.

Senator McCARTHY. All right.

Senator ERVIN. The point I am making is that the Senator is telling something somebody else told him, which would be hearsay evidence.

Mr. WILLIAMS. Your objection was that it was hearsay?

Senator ERVIN. Yes.

The CHAIRMAN. The whole matter, gentlemen, is irregular. There isn't any doubt about it. We have had to handle this because of the so-called security stamp that has been placed upon it by Mr. Brownell and apparently by Mr. Hoover, as I remember it. He asked Mr. Brownell—in fact, he told them he would have to go to Mr. Brownell to get any release of it. He felt it was classified information.

Senator McCARTHY. I think I should be entitled to finish my sentence.

The CHAIRMAN. Just a moment, Senator.

I say the whole thing is more or less irregular because we have had to handle it in a different way than we ordinarily would another document because of that situation. The other committee apparently felt it was security information and classified and for that reason they wouldn't handle it. The members didn't even read it, as I recall.

So we have to give some respect to what the other committee did about it.

That is one reason why, gentlemen, we want to take it under advisement before we even indicate we are going to take a look at it.

We have to show some respect for at least what a committee of the Senate has done.

Senator, what I had in mind was this: I don't think you should go on and explain any further about it until we have taken that under advisement.

Senator McCARTHY. Mr. Chairman, tomorrow morning could I have the privilege, not of divulging the contents of this document, but of giving my position on this document, without interruption?

The CHAIRMAN. Well, I—

Senator McCARTHY. I think I am entitled to that.

It is getting late tonight. I know the members are getting tired, but this is important to me. They asked that I be censured for having this document. I would like to explain why I have this document, why I think it should be used. If you don't want to hear that tonight, then I hope tomorrow morning I can explain my position on this document, which I consider very important.

The CHAIRMAN. I understood your counsel had called your attention to it and you had, to a certain extent, explained your situation.

Now, we can't say you won't be interrupted. I can't guarantee that because I don't know what you are going to say and we do have certain rules, and I certainly would interrupt you if I thought you were going outside the rules and getting into a completely diversionary matter; but, on the whole, we have tried to be just as courteous as we can, Senator. We want to give you the broadest, the fullest, opportunity.

So tonight let's leave the matter where it is and we will cross the bridge tomorrow—when we get to it.

Senator McCARTHY. Very well.

Senator CASE. Before you recess, I want to make a request.

The CHAIRMAN. Senator Case.

Senator CASE. First, Mr. Chairman, may I ask whether, in connection with the presentation and incorporation in the record of the committee print of the so-called Hennings-Hayden-Hendrickson report, whether a certain sheet which is labeled "Subcommittee Report on Senate Resolution 187 and Senate Resolution 304," is included in the record as a part of that report?

The CHAIRMAN. I don't think we determined that matter. The report as it came to me was a bound volume with a loose sheet inserted.

Now, I did not know whether we made a specific ruling on that or not. I would have to check back on it.

Senator CASE. Mr. Chairman, I think that loose sheet should be identified by somebody and its authenticity determined, its authorship should be determined. Reference has been made to it in the presentation by the counsel for Senator McCarthy, and attention has been called to 2 or 3 sentences in it. The sheet itself has no identification other than the label on it. It bears no names. There could be some reason for thinking it might have been prepared by the subcommittee in the 83d Congress rather than by the subcommittee in the 82d Congress, and I would respectfully request that staff take steps to provide for such identification of it and its authenticity.

The CHAIRMAN. The Chair will direct the staff to make that investigation.

Senator CASE. And along the same line, permission was given earlier in the day regarding the letter by Senator Gillette allegedly resigning from the committee, but the letter was not read into the record; nor was it offered as an exhibit by anybody. It seems to me that it should be incorporated in the record properly, either by reading it in or by stipulation or by offering it as an exhibit, and then following that, we should properly accredit the action of the committee, if any was taken on that matter.

I did not see how we can determine whether Senator Gillette's resignation was accepted or the committee reduced in size unless we have some report of the action of the committee.

The CHAIRMAN. The staff will work on that as well. There was an offer of Senator Gillette's letter and, as I recall, the Chair received it.

Now, it can be placed in the record and we can have it. It may be placed in by having it reproduced in the record from the copy that was offered, or we may have it read tomorrow.

The committee will now be in recess until tomorrow morning at 10 o'clock.

(Whereupon, at 5:03 p. m., the committee recessed until tomorrow, Friday, September 10, 1954, at 10 a. m.)

HEARINGS ON SENATE RESOLUTION 301

FRIDAY, SEPTEMBER 10, 1954

UNITED STATES SENATE,
SELECT COMMITTEE TO STUDY CENSURE CHARGES
PURSUANT TO SENATE ORDER ON SENATE RESOLUTION 301,
Washington, D. C.

The select committee met, pursuant to recess, at 10:10 a. m., in the caucus room, 318 Senate Office Building, Senator Arthur V. Watkins (chairman) presiding.

Present: Senators Watkins (chairman), Johnson (vice chairman), Carlson, Case, Stennis, and Ervin.

Also present: Senator McCarthy; E. Wallace Chadwick, counsel to the committee; Guy G. de Furia, assistant counsel to the committee; John M. Jex, clerk of the committee; John W. Wellman, staff member; Frank Ginsburg and Ray R. McGuire, members of Senator Watkins' staff on loan to the committee; and Edward Bennett Williams, counsel to Senator McCarthy, with his associates, Agnes A. Neill and Brent Bozell.

The CHAIRMAN. The committee will resume sessions.

The photographers will kindly leave the room and park their instruments outside and we will permit you to come back.

When the committee recessed last night, it had reserved a rather important question. An offer in evidence had been made by counsel for Senator McCarthy of a 2¼-page document which has been the subject of so much controversy.

The committee reserved this question for an executive meeting. It has met and it has decided at least to inspect the document preliminary to making a final decision whether it will be received in evidence.

I realize that probably counsel will feel that he cannot very well go on without a decision being made on that matter, and for that reason unless counsel does have some matters he can take up immediately, the committee will go into recess to make that inspection and to decide some other matters of policy.

Mr. WILLIAMS. I had two additional questions, Mr. Chairman, I wanted to propound on this phase of the case. I may as well ask them here now and conclude this line of inquiry.

The CHAIRMAN. You may proceed.

TESTIMONY OF HON. JOSEPH R. McCARTHY

Mr. WILLIAMS. Senator, did you give the document in question to Walter Winchell?

Senator McCARTHY. No.

Mr. WILLIAMS. Did anyone on your staff or connected in any way with your staff or your office, to your knowledge, give the document to Walter Winchell?

Senator McCARTHY. No.

Mr. WILLIAMS. I have this document here now.

The CHAIRMAN. Before it is handed to us, may I ask the Senator if, since the last copy was produced before the committee hearing, the Army-McCarthy controversy matter, has it been in your possession?

Senator McCARTHY. It has.

The CHAIRMAN. Has it been available to anyone else other than you?

Senator McCARTHY. No. It has been in my safe, I think, all the time except that I naturally showed it to Mr. Williams when we were preparing our defense on this matter.

The CHAIRMAN. May I ask again, because I am not sure in my mind that I got the answer or not. Did you authorize the making of any copies or did you have any copies made of this for your use at the hearing?

Senator McCARTHY. No; a copy was made for the Justice Department. They wanted a copy.

The CHAIRMAN. That was made by a member of your staff?

Senator McCARTHY. That was.

The CHAIRMAN. A stenographer in your office?

Senator McCARTHY. That's right; my secretary.

The CHAIRMAN. So that what we have here and which you have offered in evidence and which we are now going to inspect for the purpose of determining whether we are going to receive it is the document that was given to you?

Senator McCARTHY. The one given to me.

The CHAIRMAN. The one given to you as you related to the committee that sat here on the controversy between you and the Army?

Senator McCARTHY. That's right.

May I suggest, Mr. Chairman, that if this is received in evidence the names be deleted?

The CHAIRMAN. We will come to that, Senator. I wish you would not discuss what is in it until we take a look at it. I think it would be unwise to do that. I said last night that out of respect to the committee which had this matter before, out of respect to the Attorney General and Mr. Hoover, and of the executive department, we felt that we ought to consider this very seriously. It is no small matter. I think it is a very important matter. We don't even know the contents, but at the same time we felt, out of respect to them, we should give it the most serious consideration. That is the reason we are proceeding very cautiously in this matter because we don't want to do any single thing that will injure the security of this country, in any way impede the operations of the forces which have to defend us against those within and without.

Will you kindly mark it with your exhibit number and initial it, Senator McCarthy?

(The proposed exhibit was marked "McCarthy Exhibit No. 5".)

The CHAIRMAN. You checked that, Senator McCarthy, and you note that the exhibit mark has been put on there?

Senator McCARTHY. Right.

The CHAIRMAN. If you will deliver it in person, Mr. Williams.

(Mr. Williams handed a document to the chairman.)

The CHAIRMAN. This is not the time to read it.

All right, sir, you may proceed with the other questions you mentioned.

Mr. WILLIAMS. The committee may cross-examine.

The CHAIRMAN. I think under those circumstances, since this document is involved, probably we ought to take the recess now until 1 o'clock until such time as we can make the necessary examination and rule on these matters before we start cross-examination. Just a moment, please. The committee is still in session.

I don't like this disturbance at the conclusion or as we near the time for recesses. I will say that the press and the audience, the people who have been attending here, the citizens of the country, have behaved very well indeed without a single caution but at this time we would appreciate it if you would be quiet until we actually recess.

Senator MCCARTHY. Could I make a suggestion, respectfully, that there are many other matters which the committee will want to cross-examine me on, I assume; would it be possible to proceed with that and have the executive session over the noon hour so we can maybe get through with this this week?

The CHAIRMAN. I doubt that. The committee thinks that this is important enough that it ought to make a ruling, so if we want to cross-examine, we can cross-examine on that or make some disposition of these charges.

Mr. WILLIAMS. I think the Senator's thought was simply if the cross-examination on this document could be deferred until the committee has met this afternoon, Mr. Chadwick could go forward with other matters and we could save time.

The CHAIRMAN. The committee is not going to be idle; it is going to be as busy as it can be. There are some matters we have to decide in connection with this investigation. It is not all involved just in this one phase of it here.

We will now be in recess until 1 p. m.

Mr. WILLIAMS. 1 o'clock?

The CHAIRMAN. 1 o'clock.

(Thereupon, at 10:20 a. m., the committee recessed to reconvene at 1 p. m., same day.)

AFTERNOON SESSION

(Thereupon, at 1:35 p. m., the committee reconvened.)

The CHAIRMAN. The committee will resume session.

With reference to the exhibit offered, the committee has been in consultation with the Attorney General. He states that he has reexamined his letter to the Mundt committee. He is still of the same opinion, that the document is a security document and cannot be declassified.

The committee has decided to receive this document in evidence, however, with the understanding that the security-protection provisions will be enforced with respect to it.

The individual members of the committee have seen and read the document. We have discussed it as a committee.

No one else except members of the committee have been permitted to enter into the discussion, to read, or see, or hear any part of this document.

The committee is convinced that the document is a security document, and the information in it should be kept classified. That means, of course, that we cannot permit any cross-examination with respect to the contents of that document and we should not receive any testimony with reference to its contents, I mean, any testimony that can be made public.

We do that, gentlemen, because of the necessity of protecting the interests of the United States just as far as it is humanly possible to do so, and at the same time attempt to carry out the responsibilities which the Senate placed in our hands.

(Thereupon, the 2¼-page document referred to was received in evidence as "McCarthy Exhibit No. 5.")

Mr. WILLIAMS. Mr. Chairman, I feel that is an eminently satisfactory way of handling it. Our whole purpose has been fulfilled, simply to get the document before the committee, which is all we had ever hoped to do, so that the committee would see what we were talking about in relationship to testimony already offered.

The CHAIRMAN. I want to also explain that the committee, in considering the order of the Senate which placed this matter in our hands, came to the conclusion that the very language of the order which says that the committee shall take such testimony as it deems advisable, that authority gives us the discretion in a matter of this kind, and we feel that since the full authority of the Senate is back of us in this matter, that we have made the only decision that we could make under the circumstances.

It will be somewhat in the nature of information which is furnished to the Judiciary Committee of the Senate and other committees of the Senate with respect to classified information that comes from the FBI on appointees. Only the chairmen of the committees are permitted to see the files of the FBI when the matters of appointment of various citizens requiring Senate confirmation are considered. No other Member of the Senate gets to see those files.

We think that is a precedent, and for that reason the information will stay locked in the hearts and minds of the members of the committee, and the document itself will be placed with the proper offices of the United States Senate for safekeeping.

Senator McCARTHY. Mr. Chairman.

The CHAIRMAN. Senator McCarthy.

Senator McCARTHY. In view of the fact that that is a document which belongs to the Senate Committee on Investigations, I would like to discuss with you further the question of whether or not that should be returned to the files of our committee, but I do not want to take that up at this time. Time is running out.

The CHAIRMAN. Well, we can consider that matter later on when it is offered and becomes a document in this committee's proceedings, and it is still within the confines of the Senate and the Senate can decide what can be done with it.

But we feel that until the matter is entirely disposed of, so long as we have any jurisdiction in the matter, it should be protected.

Had you finished, in view of this ruling, all the examination of Senator McCarthy?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Well, then, the staff of the committee will proceed with cross-examination of Senator McCarthy.

Mr. CHADWICK. Mr. Chairman, with your permission, I have requested my associate, Mr. de Furia, to proceed with this cross-examination.

The CHAIRMAN. You may proceed, Mr. de Furia.

Mr. DE FURIA. With the permission of the chairman, Senator McCarthy, I would like to ask this first, sir; I would like to ask some questions with reference to the case of General Zwicker, if I may.

Senator McCARTHY. Right.

Mr. DE FURIA. As a matter of biography, and because actually I do not know, would you mind telling me, Senator, how long you yourself were in the military service?

Senator McCARTHY. I was in the service a little less than 3 years. I do not recall the exact number of months.

Mr. DE FURIA. In what capacity, Senator?

Senator McCARTHY. Why, I applied for enlistment as a private. I was informed that I was beyond the age. My application was considered. I was accepted as a first lieutenant, I believe.

Mr. DE FURIA. And was that your final rank, sir?

Senator McCARTHY. No; my rank now is lieutenant colonel.

Mr. DE FURIA. Lieutenant colonel?

Senator McCARTHY. Yes.

Mr. DE FURIA. During the 3 years and more of your military service—

Senator McCARTHY. It was less than 3 years.

Mr. DE FURIA. Less than 3 years; yes, sir. Was most of that period taken up by your service as an officer?

Senator McCARTHY. Yes.

Mr. DE FURIA. Now, as to your legal and judicial background, please, understand I think the record should show this, sir, I assume, sir, that you are a graduate of a law school; is that correct?

Senator McCARTHY. I am a graduate of Marquette.

Mr. DE FURIA. Of which school, sir?

Senator McCARTHY. Marquette University.

Mr. DE FURIA. What year, sir?

Senator McCARTHY. 1935.

Mr. DE FURIA. I have heard it said that you had judicial experience and unfortunately, I do not know. Would you mind telling us just what judicial experience you had?

Senator McCARTHY. Yes; I was elected circuit judge in 1939.

I took leave of absence early in 1942 to enter the service. My fellow judges took care of my work.

I was reelected in 1945. I served until I entered the United States Senate.

Mr. DE FURIA. Yes, sir.

Now, is your circuit court a court of record? Were you a judge conducting trials, sir?

Senator McCARTHY. Yes, that is the court of highest original jurisdiction, appellate jurisdiction, over lower courts.

In other words, the court next above that is the final court of the State. We call it the State supreme court.

Mr. DE FURIA. Yes, sir.

Now, I assume that while you were in the military service, Senator, it was necessary for you to obey military orders?

Senator McCARTHY. It was.

MR. DE FURIA. Is it a fair question for me to ask that you always obeyed the orders of your superiors without exception, sir?

Senator McCARTHY. I obeyed them to the best of my ability.

MR. DE FURIA. Now, let me ask you a fair question, I think, Senator; do you have any personal feeling against General Zwicker, sir?

Senator McCARTHY. No, I never met Zwicker before he appeared on the stand.

MR. DE FURIA. And you had never met the general until that morning or afternoon—I beg your pardon, it was morning—in New York on February 18, is that correct?

Senator McCARTHY. That is correct.

MR. DE FURIA. Since you have criticized him, and I think rather severely, and I am not entering into the merits or demerits of what you did, Senator, I take it that the fair inference is that you think his conduct justified your criticism, is that correct, sir?

Senator McCARTHY. Right.

MR. DE FURIA. Does that mean, Senator, that you really think that what transpired between you and General Zwicker that day up in New York actually justified you in criticizing him as an officer who did not tell the truth under oath and, oh, making some remark about not having the intelligence of a 5-year-old child?

I don't remember the exact words.

Senator McCARTHY. I didn't say the intelligence of a 5-year-old child. After I was asked to reread a very simple question, I think 2 or 3 times, I said, "A 5-year-old child could understand that question."

I might say Mr. Williams tested that on a 5- or 6-year-old child. She understood the question.

I was trying to get him to answer the question, trying to get him to quit stalling.

MR. DE FURIA. But the only conduct of General Zwicker, as I understand it, which you think justifies your criticism—or I better not even use the word "criticism"—your statements—with reference to him, are what transpired in the hearing partly in the morning and partly in the afternoon; is that correct, sir?

Senator McCARTHY. That is the only contact I had with General Zwicker.

MR. DE FURIA. Now, we had a Mr. Harding here who testified that he heard a remark by General Zwicker that morning, using three initials, the letters which are sometimes found together.

You didn't even know that that had occurred; is that right, Senator?

Senator McCARTHY. I did not know that had occurred at the time. However, his attitude was in complete keeping with the cursing he did at me that morning.

MR. DE FURIA. Of course, sir, that is your conclusion.

Senator McCARTHY. Well, I would be the only one, I believe, who could conclude that. I was examining him. None of you were there.

MR. DE FURIA. Well, the rules of this hearing are such that I can't make objections as to competency of evidence, although Mr. Williams can, but I think that is a conclusion from certain facts that you observed; isn't that right?

The CHAIRMAN. The Chair observes it is a conclusion, but it has already been said, and said before, not with respect to this particular item.

Senator McCARTHY. It is the conclusion, Mr. Chairman, based—
The CHAIRMAN. Ordinarily it ought to go out, but it has already been said and we will let it stay.

Senator McCARTHY. Mr. Chairman, it was a conclusion on the part of everything I observed on the part of General Zwicker that day.

The CHAIRMAN. In addition to that, Senator, so I won't have to call your attention to it again, that was not responsive.

Of course, the first part of your answer was; the last part was not.

In other words, you were volunteering that last part. It wasn't called for by the question.

Mr. DE FURIA. Senator, in all fairness, wasn't some of your criticism of General Zwicker and your statements about him and his attitude really intended for the benefit of the Army and not General Zwicker?

Senator McCARTHY. Are you referring to remarks I made during the hearing or remarks after the hearing, Mr. de Furia?

Mr. DE FURIA. Well, I haven't been able to separate them. Let's say the ones during the hearing, Senator.

Senator McCARTHY. I don't think you could call those criticisms. It is just a method of cross-examination, trying to get the truth.

Mr. DE FURIA. When you say to a general, sir, that he is not fit to wear the uniform after serving in the Army for 35 years, you don't consider that a criticism?

Mr. WILLIAMS. I don't think that question is predicated upon the facts, Mr. de Furia. You have fallen into a very common error.

The CHAIRMAN. I think I can correct that in a minute.

I think the record shows, Mr. Williams, that you referred to "that uniform" or "uniform of a general."

That is Senator McCarthy's testimony; is that right?

Mr. WILLIAMS. The reference shows page 153, and I think these questions should be based upon the record.

Mr. DE FURIA. I am basing it upon a sworn copy of the record, Mr. Williams.

Mr. WILLIAMS. May I finish, Mr. de Furia?

Mr. DE FURIA. Certainly, sir.

Mr. WILLIAMS. The record shows at page 153 that the statement which was made was that:

Any man who has been given the honor of being promoted to general and who says "is not fit to wear that uniform, General."

Now, I think in the interest of an impartial examination, we should stick to the record and not pose questions that are not predicated upon the facts.

Mr. DE FURIA. Mr. Williams, I will accept that language and hope I didn't use any other language.

As I understand it, the remark as I have it is:

"You are not fit to wear that uniform, General"; is that correct, sir?

Mr. WILLIAMS. No, it isn't correct, Mr. de Furia.

Senator McCARTHY. May I—

The CHAIRMAN. Just one at a time.

Mr. DE FURIA. Perhaps Senator McCarthy, then, will correct me. I certainly don't want to make a mistake.

Mr. WILLIAMS. I am sure you don't; and if you look at page 153, you can see what the language is.

Mr. DE FURIA. Well, Senator McCarthy can certainly answer my question and tell me what he thinks the remark was.

Senator McCARTHY. I won't tell you what I think it was. I will tell you what it actually was.

Mr. DE FURIA. That is preferable, Senator.

Senator McCARTHY. I had asked the general whether or not he felt that a man such as Peress, without repeating the question, a man guilty of a felony, a felony calling for 5 years' imprisonment—there is no question about that—a man known to be a Communist——

Mr. DE FURIA. May I stop you, sir. I am asking you now directly: What was the statement you made about the——

Senator McCARTHY. I must first give you the question so you will have the reason for the statement, if I may.

Mr. DE FURIA. Mr. Chairman, I ask that the Senator be directed to answer my questions.

The CHAIRMAN. Read the question, Mr. Reporter.

I think the Senator should answer the question without volunteering information not necessary to the answer.

Senator McCARTHY. I can save you——

The CHAIRMAN. Just a moment. We have called for the reading of the question, sir.

Senator McCARTHY. I can save you the trouble.

The CHAIRMAN. We wanted the reporter to read the identical question that was asked of you.

(The reporter read as follows:)

Mr. DE FURIA. Well, Senator McCarthy can certainly answer my question and tell me what he thinks the remark was.

Senator McCARTHY. I won't tell you what I think it was. I will tell you what it actually was.

Mr. DE FURIA. That is preferable, Senator.

The CHAIRMAN. All right. This is strictly confined to the remark.

Senator McCARTHY. I will read from page 153——

Answer: Then, general, you should be removed from any command. Any man who has been given the honor of being promoted to general and who says, "I will protect another general who protected Communists," is not fit to wear that uniform, general.

I believe that is the pertinent part.

Mr. DE FURIA. I think, Senator, all three of us are in agreement, then. That is exactly what I meant.

Now, as I understand it, you are marking a distinction, and you have testified what you really meant was the uniform of a general and not the general Army uniform; is that correct, sir?

Senator McCARTHY. That is exactly what I said, and that is exactly what I meant.

Mr. DE FURIA. Now, general—or Senator—excuse me, sir.

Senator McCARTHY. Thank you.

Mr. DE FURIA. Perhaps someday, sir, we will have a right to address you as general.

Mr. WILLIAMS. Still colonel, Mr. de Furia.

Mr. DE FURIA. Colonel, yes.

Senator, would you mind telling us what was the exact question, that you addressed to General Zwicker that you say could have been answered by any 5-year-old child?

Senator McCARTHY. Yes.

Mr. DE FURIA. Frankly, I have had some difficulty with it and I would like to hear the question, if you will give it to us.

Senator McCARTHY. Page 152, the last question :

Let us assume that John Jones is a major in the United States Army. Let us assume that there is sworn testimony to the effect that he is part of the Communist conspiracy, has attended Communist leadership schools. Let us assume that Maj. John Jones is under oath before a committee and says, "I cannot tell you the truth about these charges because, if I did, I fear that might tend to incriminate me." Then let us say that General Smith was responsible for this man receiving an honorable discharge, knowing these facts. Do you think that General Smith should be removed from the military, or do you think he should be kept on in it?

And then that was qualified by pointing out, on page 153, the second question, that I am referring to a general not who is acting under orders, but who originated the order directing the honorable discharge; and then, when the general said he should by all means be kept on, I made the statement which I made.

I stand by that statement. I feel it very, very strongly.

Mr. DE FURIA. Senator, before you questioned General Zwicker in New York, you knew, did you not, that he was anything but a sympathizer with Communists?

Senator McCARTHY. I knew nothing about General Zwicker before I questioned him.

Mr. DE FURIA. Didn't you have a report about General Zwicker from Mr. Anastos, of your staff, and Mr. Juliana, at least as to some matters connected with the case?

Senator McCARTHY. Not from Mr. Anastos. As I recall, I received no report from Mr. Anastos. I had received a report from Mr. Juliana.

Mr. DE FURIA. Excuse me, sir. What is the full name of Mr. Anastos, Senator?

The CHAIRMAN. In the first place, he is not on the staff, I do not believe.

Mr. DE FURIA. That may be on a wire. That is the way it was given, that he was a member of Senator McCarthy's staff. I may be mispronouncing the name. If so, I am sorry; you will excuse me.

Senator McCARTHY. The first name is George. I cannot give you the spelling. Jim, can you give the spelling of that?

Mr. JULIANA. A-n-a-s-t-o-s.

Mr. DE FURIA. Perhaps my pronunciation is wrong; at least I have the spelling right. Now, was he a member of your staff?

Senator McCARTHY. He was, yes.

Mr. DE FURIA. He was?

Senator McCARTHY. And is.

Mr. DE FURIA. And did he not go up to see General Zwicker, or talk by telephone to General Zwicker, a month or 6 weeks before February 18, 1954?

Senator McCARTHY. Well, the only man I got a report from was Mr. Juliana. Now, it is possible that my chief counsel sent George up there also, but the report which I received was from Mr. Juliana. I received no report from Mr. Anastos.

Mr. DE FURIA. On February 18, Senator, did you know that there was a separation order issued with reference to the Peress case?

Senator McCARTHY. On the 18th, I knew that, yes.

Mr. DE FURIA. Is that the first time you knew it?

Senator McCARTHY. No. I believe the newspapers carried a story about that on the 2d day of February.

MR. DE FURIA. Well, what I have in mind is this, sir—and it may well be that you don't know, but I will ask the question. Didn't you know, Senator, that as soon as the Peress separation order came through to General Zwicker, he gave that information to Mr. Anastos of your staff and that was considerably in advance of February 18?

Senator McCARTHY. I don't know that.

MR. DE FURIA. Did you know that some days before February 18, Mr. Juliana—I think he was on your staff also—is that correct, sir?

Senator McCARTHY. He was, and is.

MR. DE FURIA. Was and is? And what is his first name, sir?

Senator McCARTHY. Jim.

MR. DE FURIA. Jim? Yes. Isn't it a fact that Jim Juliana got a copy of the separation order from General Zwicker some days in advance of February 18, 1954?

Senator McCARTHY. He may well have. I would have to ask Jim that date.

MR. DE FURIA. Well, you perhaps do not know, Senator.

Senator McCARTHY. I do not know.

MR. DE FURIA. Is it that you don't know, or you don't remember, sir? I was trying to be fair.

Senator McCARTHY. I don't know who got a copy of the order.

MR. DE FURIA. Do you recall whether Mr. Juliana had the copy of the separation order in the hearing up at New York in February 18, 1954?

Senator McCARTHY. Now, I would have to rely upon my memory. I think we got a copy of the order from the general that day. It is possible that Jim may have an order prior to that date.

MR. DE FURIA. Senator, when General Zwicker was testifying up in New York, did you know that he was not a free witness, in the sense that he was bound by orders of the President and orders of the Secretary of the Army?

Senator McCARTHY. General Zwicker said that he would not be allowed to give security information, unless he had the permission of the Assistant Chief of Staff of G2. He was asked to request that permission. He refused to request the permission. We, however, were not questioning him about security matters; we were questioning him about personnel matters, which would not be covered by the order. He was not relying upon a Presidential order; he was relying upon an Army order, which did not cover personnel matters.

MR. DE FURIA. Well, what I am saying, Senator—perhaps I do not make it clear, sir—if I were called to the stand, I could testify in one fashion, not being in the Army or not subject to Presidential orders or orders of the Secretary of the Army. Now, don't you think there is a difference between my hypothetical case and General Zwicker testifying before you as an Army officer subject to the orders of his Commander in Chief and superior?

Senator McCARTHY. I think you have to point to the questions which might come within an order, when I asked him, for example, whether he knew that this man was a fifth-amendment Communist. You and he would be in the same position in answering that, all down the line. Now, you might get to certain questions that he could not answer, on account of security; but in that case, I said, then, "General, when you ask for permission"—I didn't ask him to give us any security

information—I said “will you ask for the permission from the Assistant Chief of Staff of G2?”

You will find this on page 157. He said, “No.” He said, “No.”

In other words, here was a general who said, “I won’t even ask for the permission which I might get.”

If you go over these questions, Mr. de Furia, you will find—

The CHAIRMAN. I think you have answered the question, Senator. I do not know what you are going to say, but I know counsel hasn’t any opportunity to object, so it is the Chair’s duty not to let this get more than the question calls for, and then go on with another question and answer.

MR. DE FURIA. May we have the question read, Mr. Chairman, please?

The CHAIRMAN. Will the reporter read the question, please?

(The previous question was read by the reporter.)

Senator McCARTHY. You would have to refer to specific questions, because, as to some of the questions, the answer would be definitely “No”; as to roughly 95 percent of them, and there might be some questions here, where they would be in a different category.

MR. DE FURIA. Well, we have read every word of every line of these proceedings, Senator, and—well, let me ask, Is that your answer, sir, to that question?

Senator McCARTHY. That is my answer.

MR. DE FURIA. Now, you have cited a part of the testimony in the hearing before you, I think, appearing on page 157. Isn’t this the quotation or the excerpt, Senator?

The CHAIRMAN. In the meantime, in accordance with the order which you claim forbids you the right to discuss this case, you will contact the proper authority who can give you permission to tell the committee the truth about the case before you appear Tuesday, and request permission to be allowed to tell us the truth above the—

And there is a line, showing an unfinished statement; and General Zwicker replied:

Sir, that is not my prerogative, either.

Now, isn’t that—

Senator McCARTHY. I think you have to read the next two lines, so we will have the full context.

MR. DE FURIA. All right.

The CHAIRMAN. You are ordered to do it.

General ZWICKER. I am sorry, sir, I will not do that.

The CHAIRMAN. All right.

Now, this is the answer; is it not?

Senator McCARTHY. That is part of the testimony.

MR. DE FURIA. Now, here is a question, Senator, that has been raised by some of the—question was raised by committee members in these proceedings that I think ought to be answered, sir.

In examining General Zwicker, were you trying to obtain information for legislative purposes, or were you really trying to punish the general or criticize the Army, sir?

Senator McCARTHY. I was not trying to punish the general or criticize the Army. I was trying to receive information for two reasons:

No. 1, to expose any incompetence or wrongdoing;

No. 2, as a background for possible legislation.

That is the function of the committee. We are not restricted to getting information merely as a background for legislation.

I refer you to the Reorganization Act.

MR. DE FURIA. Yes, sir. I have to depend, Senator, to some extent, on my memory at this point, but I believe you said, sir, that General Zwicker was the most arrogant, most evasive, and most irritating witness who ever appeared before you.

Can you give us any fact in the record of the proceedings of the hearing before you, Senator, or out of the record, upon which those conclusions are based in order to help the committee find the facts, sir?

Senator McCARTHY. I think I said, one of the most arrogant, et cetera.

MR. DE FURIA. I think that is correct—again depending on my memory.

Senator McCARTHY. As far as evasive, you will find that originally the general was asked whether he knew that the major had refused to answer certain questions. He indicated that he did not know that.

Then later, after cross-examination, he admitted that he knew that he had refused to answer questions, but indicated he did not know that he had refused to answer questions about communism.

After further cross-examination, he admitted that he was, using his language, I am sure I had that impression, namely, that he had refused to answer questions about communism—no reason for that evasiveness; no reasons why he should have taken up our time.

He could have simply told us the truth to begin with. That is one example.

Now, if you want me to, I will go through all of the testimony. It will take some time to cite other examples, but there is a very flagrant example.

Another case on page 146. I say:

You know that somebody signed or authorized an honorable discharge for this man, knowing that he was a fifth-amendment Communist, do you not?

A simple question for the general. Either he did or he did not know that. His answer:

I know that an honorable discharge was signed for the man.

But his whole attitude was in line with the testimony indicated by Mr. Harding, which he was cursing me out for exposing a Communist.

MR. DE FURIA. You say General Zwicker?

Senator McCARTHY. I might say, if you had General Lawton's testimony, you would have a better picture of this.

MR. DE FURIA. We tried to get it, Senator.

The CHAIRMAN. That is a remark not permitted. That will go out, about General Lawton.

Senator McCARTHY. I assume, Mr. Chairman, when you say the remark will go out, it will stay in the record, but you will indicate that you are striking the remark.

The CHAIRMAN. Whatever the mechanics are for it. I think it was improper response to the question asked by Mr. de Furia.

MR. DE FURIA. Senator, I didn't quite catch the last few words. Did you say that General Zwicker cursed you out?

Senator McCARTHY. I used the word "cursed."

MR. DE FURIA. Cursed you out for doing what, Senator? I didn't hear, really.

Senator McCARTHY. Cursing me for exposure of the fifth-amendment—the testimony of Mr. Harding——

MR. DE FURIA. You are assuming what Mr. Harding said is the truth, Senator?

Senator McCARTHY. I certainly am.

MR. DE FURIA. You are assuming that Peress was a proven Communist?

Senator McCARTHY. There is evidence that he is a Communist, evidence that has not been contradicted. Therefore, I say it is completely proven.

MR. DE FURIA. May I ask, sir, are you not necessarily assuming that General Zwicker knew that Peress was a proved Communist?

Senator McCARTHY. General Zwicker being his commanding officer knew that he had taken the fifth amendment, No. 1; No. 2, he knew or should have known of the testimony before our committee, because the Army legal counsel was present at the time it was taken. An undercover agent for the New York Police Department, Mr. Adams, who was present, spent the afternoon before Zwicker's testimony with Zwicker. So I think that any logical conclusion is that Zwicker had all of the information.

MR. DE FURIA. Now, assuming, Senator, that for the sake of this question, anyhow, General Zwicker did testify in what we might call a stilted fashion, don't you think that the fair inference, rather than to say that the general was deliberately telling an untruth, or stalling, or distorting facts, that the fair, judicious inferences that he couldn't do very much else in the face of the Presidential orders and the other orders of his superiors; isn't that the fair way to look at it, Senator?

Senator McCARTHY. No, Mr. de Furia. When a general comes before me and first says, "I didn't know this man refused to answer any questions," then after he is pressed under cross-examination, he says, "Yes, I knew he refused to answer questions, but I didn't know he refused to answer questions about Communist activities"—then, after further cross-examination, he says, "Yes, I know that he refused to answer questions about Communist activities"—I can't assume that is the result of any Presidential directive.

We cannot blame the President for that.

MR. DE FURIA. What can you assume, or what did you assume?

Senator McCARTHY. I assumed that he was trying to duck and avoid giving me the facts. You couldn't assume anything else when he changed his story three times.

MR. DE FURIA. I think you went further yesterday, Senator. I think you said several times that General Zwicker had not told the truth under oath.

Is that your statement, sir, or not?

Senator McCARTHY. Mr. de Furia, when on one page he says, "I did not know"——

The CHAIRMAN. Senator, respond to the question.

Senator McCARTHY. I will respond in my own fashion, Mr. Chairman.

I say, when on one page he says one thing; he changes his story on the next page; changes it again on the next page—I would say to

this committee it is up to it to decide whether he was telling the truth.

The CHAIRMAN. The question asked, as I understood it, was "What did you say," whether he told the truth, or not. Isn't that the question?

Mr. DE FURIA. Yes. What did the Senator say yesterday? I understood him to say several times, sir, that General Zwicker had not told——

Mr. WILLIAMS. Would you point that out in the record so that we will have the——

Mr. DE FURIA. I don't want to be interrupted that way.

The CHAIRMAN. Just a moment.

Mr. DE FURIA. The committee has a recollection of whether Senator McCarthy said that or not. I think that is a fair question.

Did he say it, or did he not say it?

Senator McCARTHY. Let me say this, Mr. de Furia: I don't know what I told you yesterday, but he could not have been telling the truth on all three occasions.

The CHAIRMAN. The answer, of course, is——

Senator McCARTHY. On two of them, he was—I think I used the word—evasive.

I don't think I accused him of perjury.

Mr. DE FURIA. I don't think you used the word "perjury," sir.

Senator McCARTHY. Nor I don't think I used the words "not telling the truth." I may have used them.

Mr. DE FURIA. You say you may have.

Senator McCARTHY. I may have; I don't know.

I would have to check the record.

The CHAIRMAN. Let me ask this question at this point: Do you now say that he was not telling the truth? That is what we are interested in.

Senator McCARTHY. He misstated the facts. Not telling the truth may mean that you are willfully committing perjury. I do not accuse him of that. I say that he told three contradictory stories. Two of them had to be untrue.

The CHAIRMAN. The answer is that you don't believe he went so far as to be guilty of telling an untruth?

Mr. WILLIAMS. I think the answer——

The CHAIRMAN. It will have to stand for what it is, but I wanted to see if I had the right interpretation.

In other words, my memory was that you said he hadn't told the truth and I wanted to get that clear. I may be mistaken in my memory of what was testified to.

Senator McCARTHY. Let me put it this way: He was not giving us the true facts on 2 of the 3 occasions because they were contradictory. I don't want to say he was lying because that presupposes that he remembered and knew what he was doing. I don't want to delve into his mind. It may have been just extremely bad memory from page to page. It may have been incompetence. I don't know.

Mr. DE FURIA. Senator, you described the general at the hearing as "coy." Just what did you mean by "coy"? To my mind that is somewhat distant from being evasive or untruthful or some other pleasant adjective.

Senator McCARTHY. My interpretation of that would be evasive. Perhaps I should have used the word "evasive" instead of "coy." But on cross-examination you might use one word; I might use another.

Mr. DE FURIA. Very well, sir.

In fairness to this military officer who, justified or unjustified, has been accused of untruthfulness under oath before a Senate committee, would you mind pointing out to me just what in the record you say shows that he was not telling the truth, sir, before you?

Let me say in explanation we have studied the record many times, sir. We have had some difficulty and perhaps you can enlighten us.

Senator McCARTHY. I pointed it out yesterday. I will do it again today.

Mr. DE FURIA. Yes, sir; I would like to have it all, Senator, if you don't mind.

Senator McCARTHY. On page 146, you will find the day—going to the bottom of the page, the third last question:

The day the honorable discharge was signed, were you aware of the fact that he had appeared before our committee?

General ZWICKER. I was.

The CHAIRMAN. And had refused to answer certain questions?

General ZWICKER. No, sir; not specifically on answering any questions. I knew that he had appeared before your committee.

So we find he says he didn't know that he refused to answer questions.

Mr. DE FURIA. Will you read that line correctly, Senator? I may have missed you.

Mr. WILLIAMS. He read the line correctly. He says:

No, sir, not specifically on answering any questions.

That is the way he read, Mr. de Furia.

Mr. DE FURIA. I beg your pardon.

Mr. WILLIAMS. Did you have any misunderstanding about that, sir?

Mr. DE FURIA. Yes, sir.

Senator McCARTHY. May I have the reporter read back what I read to be sure I wasn't misquoting the general? Could the reporter read—

The CHAIRMAN. You may read it.

Senator McCARTHY. The quotation of General Zwickler. Will you follow this, Mr. de Furia?

Mr. WILLIAMS. I know you want to be fair, Mr. de Furia.

Mr. DE FURIA. Mr. Williams, I have been fair. I am trying to be fair, and I don't need to be lectured by you, sir.

Mr. WILLIAMS. I am going to try to help you to be fair.

Mr. DE FURIA. You can't help me. If I exceed the bounds, I am sure the chairman and the members of the committee will see that I don't go across the lines.

Mr. WILLIAMS. That is one of my functions, to try to help you to be fair here in your examination, sir.

The CHAIRMAN. Gentlemen, I think both gentlemen wanted to be fair, so let us be fair.

Senator McCARTHY. If the reporter can read back my quotation of Zwickler, and if Mr. de Furia would follow it and tell me wherein I misquoted—

The CHAIRMAN. I have already directed him to read it back. If you will just stop long enough so he can.

Senator McCARTHY. Very good.

(The reporter read the testimony referred to as follows:)

The CHAIRMAN. The day the honorable discharge was signed, were you aware of the fact that he had appeared before our committee?

General ZWICKER. I was.

The CHAIRMAN. And had refused to answer certain questions?

General ZWICKER. No, sir, not specifically on answering any questions. I knew that he had appeared before your committee.

Mr. DE FURIA. I am afraid we are both mixed up; I don't know. If I made a mistake, I heartily apologize. I was not following it that time. It just struck me that you had omitted the word "specifically." If you had not, you have my humble apology. That is the only point.

Senator McCARTHY. I know you didn't do it purposely.

Mr. DE FURIA. Thank you, sir.

Senator McCARTHY. The next, where he contradicts that—now we go to the next page, page 147. That is the 1, 2, 3, 4, 5 answers from the bottom.

General ZWICKER. I know that he refused to answer questions for the committee.

You found there a complete contradiction.

Mr. DE FURIA. May I say, sir, Senator, that is your conclusion, is it not, Senator McCarthy?

Senator McCARTHY. Could I read the two answers?

First is the question by me, which appears on page 146, near the bottom, in which I had said:

And had refused to answer certain questions?

General ZWICKER. No, sir; not specifically on answering any questions. I knew that he had appeared before your committee.

And then he says—at page 147, about three-fourths of the way down the page:

I know that he refused to answer questions for the committee.

I will let the Senators conclude whether that is contradictory, or not.

Mr. DE FURIA. May I suggest, sir, that that is a conclusion which should be made by the committee and they will have to say whether it is contradictory or not.

Mr. WILLIAMS. Mr. Chairman, Mr. de Furia asked the Senator to point out the contradictions, and now when he undertakes to do it he says that he is drawing a conclusion.

The CHAIRMAN. Well, as a matter of fact, I think the question did call for a conclusion.

In other words, he has to make some kind of a judgment on it as to whether they are contradictory or not.

Mr. DE FURIA. Mr. Chairman, Mr. Williams and I are in agreement that Senator McCarthy can point out in this record just what he thinks exhibits the untruthfulness of General Zwickler.

The CHAIRMAN. Point to the facts without arguing about it, if you can, sir.

Senator McCARTHY. The next question, and I am now reading from page 147 near the bottom of the page was where I asked General Zwickler:

Did you know that he refused to answer questions about his Communist activities?

General ZWICKER. Specifically, I don't believe so.

Now, after further cross-examination on page 148, dropping down to the last half of the first question, I omitted the first half, because it is not pertinent:

Now, is it your testimony now that at the time you read the stories about Major Peress, that you did not know that he had refused to answer questions before this committee about his Communist activities?

Here he says:

I am sure I had that impression.

Now, he could have told us that previously, earlier. No reason for his being coy about that.

You asked for another example.

Mr. DE FURIA. I would like to have them all, sir, please.

Senator McCARTHY. Oh, I cannot give them all to you. I will just give you some here.

On page 148, we were talking about whom I had discussed the Peress discharged after my letter calling for his court martial.

Mr. Cohn asked:

Who did you talk to? You talked to somebody?

General ZWICKER. No; I did not.

Now, in contradiction of that is the statement of me—strike that.

Let us take this testimony under oath. Testimony of Peress.

The CHAIRMAN. You are going to read now the testimony of Peress?

Senator McCARTHY. Yes, sir; which is in contradiction of this.

The CHAIRMAN. You do not mean to say that you base your judgment of General Zwicker by reading what Peress said?

Senator McCARTHY. I had to base my judgment of whether Zwicker was telling the truth on the other testimony. I knew Peress got a discharge. I was trying to find out from Zwicker why he got it. I had the information from my investigators. Peress had testified under oath as to what occurred in his conversation with Zwicker.

Now, if I may read that, on page 126, he was asked, coming back to page 125:

Who is the highest ranking officer with whom you spoke after your appearance before the committee?

Mr. PERESS. General Zwicker.

The CHAIRMAN. General Zwicker? What conversation did you have with General Zwicker?

(The witness conferred with his counsel.)

Mr. PERESS. Would you repeat that question, please?

The CHAIRMAN. Will the reporter read the question?

(The reporter read from his notes as requested.)

Mr. PERESS. I don't recall the exact word-for-word conversation. I requested of General Zwicker after the hearing before you on January 30, when I saw him on February 1, that an inquiry be made into these charges, that the newspapers had lambasted me with on Sunday and Monday.

The CHAIRMAN. Did you tell him whether or not you were a Communist?

Again the record shows the witness conferred with his counsel.

Mr. PERESS. I decline to answer that question on the grounds—

The CHAIRMAN. You wanted an inquiry made as to whether or not you are a Communist; is that correct?

(The witness conferred with his counsel.)

Mr. PERESS. I wanted an inquiry of my conduct at Camp Kilmer.

The CHAIRMAN. Did you want the inquiry to include the question of whether or not you had been holding Communist meetings at your home, whether you had attended a Communist leadership school, whether you had been recruiting mili-

tary personnel there into the Communist conspiracy? Did you want that included?

And there again the witness conferred with his counsel.

Mr. PERESS. I could not tell them what to inquire about, but I asked for an inquiry of the charges generally. I didn't specify as to which charges to inquire into and which not to inquire into.

So we have a contradiction there between two of the witnesses.

You find this type of evasiveness—pardon me, I am afraid that would not be responsive to your question. If you want me to I will go through and read all of this testimony. It will take quite some time but I have given you examples of contradictions in his testimony which were sufficient to show me that he was either willfully falsifying or being very, very evasive.

Mr. DE FURIA. Well, General—Pardon me—Senator, the reputation of this general has certainly been affected and certainly his career may be affected and I would like you to give us every other specific example of untruthfulness if you can find it.

I do not want you to read the whole record. We have it. The committee has it, but you must certainly have something in your mind, Senator.

Mr. WILLIAMS. I think, to respond to that question fairly, it is necessary to go through the record and point out what Senator McCarthy's conclusions are with respect to all the testimony. I think that is the only way this question can be answered. It is a very broad question, calling for a very broad answer. I do not think he should be required to answer it any other way.

Mr. DE FURIA. Very well, sir. I won't press it any further.

Senator, on page 606 of our own committee transcript, which is volume 5, September 8, 1954—

Mr. WILLIAMS. You may go right ahead and read it, Mr. de Furia. We will attempt to get our file copy in the meantime.

Mr. DE FURIA. There is a statement by you, sir, and I will read it:

Senator McCARTHY. Now, Senator, let me say this, that I had the information, the official report from my investigator, that the general did not feel that way, that he felt it was improper to give this man an honorable discharge—I thought the general was not telling me the truth.

Senator McCARTHY. That is correct.

Mr. DE FURIA. Will you explain that, please, Senator?

Senator McCARTHY. I will be glad to explain it again.

I had the report from my investigators to the effect that Zwicker said that it was not his decision to discharge Peress; that he talked to the Pentagon; he was given instructions; he then called Peress in and urged Peress to accept an honorable discharge at that time, rather than to wait out the full 90 days, and that Peress acceded to his opportunity.

For that reason, I felt that Peress was guilty of another untruth, and no reason why my investigator would misrepresent the facts to me.

Mr. DE FURIA. You said, sir, I believe, that Peress was guilty of another untruth. Did you mean that, sir?

Senator McCARTHY. I meant Zwicker.

Mr. DE FURIA. Did you really mean by that statement, refreshing your recollection, Senator, that you knew that General Zwicker had

protested to his higher authorities on the discharge of this man Peress?

Senator McCARTHY. When he was not under oath, he so claimed, but when he was under oath, he would not give that story.

Mr. DE FURIA. Well, you knew, did you not, Senator, that he couldn't give you the story because of the orders of his superiors in the form of the Presidential directive and orders of the Secretary of the Army?

Senator McCARTHY. That is incorrect.

Mr. DE FURIA. Why, Senator? Would you mind enlightening me, sir?

Senator McCARTHY. The orders under which he was operating had to do only with security matters, not personnel matters.

This was strictly a personnel matter. This could in no way affect the national security. It could in no way divulge any security investigation of this man——

Mr. DE FURIA. Did you have——

Senator McCARTHY. If it had to do with——

Mr. DE FURIA. Excuse me.

Senator McCARTHY. Who was responsible for giving him an honorable discharge before Secretary Stevens could come back and make the decision himself, removing him from the jurisdiction of the Army.

Mr. DE FURIA. Were you familiar, Senator, with the specific Presidential and Army orders under which General Zwicker was attempting to testify before you?

Senator McCARTHY. I was familiar with the one that he said restricted him. He read to us an order, an Army order, which said he could not give security information without the permission of the assistant chief of staff of G-2.

Mr. DE FURIA. I am trying to find some explanation, if I can, Senator, for what some person, not any of us, any particular persons, might think was somewhat harsh criticism or statements about General Zwicker, and I am asking you:

Was your statement with reference to him affected by your attitude toward Presidential and Executive orders?

Senator McCARTHY. Not at all. Presidential orders didn't come into this.

Mr. DE FURIA. Pardon, sir?

Senator McCARTHY. Presidential orders did not come into this. He was not relying upon any Presidential order.

Mr. DE FURIA. Sir, that is your conclusion and interpretation, whereas General Zwicker had to make that decision for himself, did he not, at the risk of violating the orders of his superiors?

Senator McCARTHY. The Presidential order deals only with security matters, not personnel matters.

Mr. DE FURIA. Well, we may have a look at those orders later on, Senator, but did you ask General Zwicker to see the orders which required him to testify as he did before you, sir?

Senator McCARTHY. Did I what?

Mr. DE FURIA. Did you ask him to produce the orders at your hearing in New York and say, "General, where is this order that says you can't talk or you can't answer some of these questions? Where is the order from the Secretary of Defense?"

Was that done?

Senator McCARTHY. No. I pointed out to him that he was relying upon an Army order which said that he could testify if he had permission from the Assistant Chief of Staff, and I said, "Will you ask for that permission, General?"

He said, "No, I will not ask for the permission."

Mr. DE FURIA. He said that was not his prerogative, did he not, Senator?

Senator McCARTHY. No. That is what he said.

Mr. DE FURIA. Senator, in all fairness, didn't you realize, or don't you now appreciate, it was more or less of an intellectual problem for General Zwicker to reply to some of your questions in view of the fact he was surrounded and restricted by these Presidential orders and the orders of the Secretary of the Army? Isn't that a fair statement?

Mr. WILLIAMS. Mr. Chairman, may I ask Mr. de Furia to which questions he refers now? I think we should have that.

The CHAIRMAN. Do you wish to reframe your question?

Mr. DE FURIA. No, sir.

Senator McCARTHY. In looking over this transcript, Mr. de Furia, I can, offhand, find not questions that would be affected by any Presidential order that would give him any intellectual—what did you say? Problem?

Mr. DE FURIA. Yes, sir, and by that I mean these orders have to be borne in mind, it would seem to me, by General Zwicker in answering your questions, and he had to decide for himself how far he could go, what he could say and what he couldn't say. Isn't that fair?

Senator McCARTHY. No, that is not fair. He could refuse to answer a question on the grounds of a Presidential directive, but he was not entitled to give an evasive answer or an answer which was not the truth. In other words, if a Presidential order bound him, he could say, "I cannot answer that because of a Presidential directive."

That would have been respected, that answer, but where he changes his story from page to page, we can't blame any Presidential directive for that.

Mr. DE FURIA. You say, Senator, that would have been respected?

Senator McCARTHY. Yes, I think it would have been respected.

Mr. DE FURIA. Didn't you order him to see whether he could not be released from a Presidential directive?

Senator McCARTHY. Not a Presidential directive. There was an Army order which said he could testify as to security matters if he first got permission from the Assistant Chief of Staff of G-2.

Now, I felt we were not asking about security matters, but giving him the benefit of the doubt. I said, "Now, won't you go to the Assistant Chief of Staff of G-2 and ask for permission to tell us the truth?"

And I can see no reason on earth why this General should not say, "Yes; I will ask the Assistant Chief of Staff whether or not I can give this information."

That was the way to get the answer to it. He refused to do that.

The CHAIRMAN. Senator, a matter that bothers me in connection with your examination is this: I thought you said—I want to get this right—that personnel information would not be security information.

Senator McCARTHY. That is correct.

The CHAIRMAN. That is your conclusion?

Senator McCARTHY. That is right.

The CHAIRMAN. Under no circumstances could it be security?

Senator McCARTHY. That is my conclusion.

The CHAIRMAN. I see.

Senator McCARTHY. It had to do with the discharge of this individual.

The CHAIRMAN. I know, but general security information——

Senator McCARTHY. This would not be security information in my opinion, by any stretch of the imagination; but I gave him the benefit of the doubt in that and said, "Won't you ask for permission and give us this information?"

That would be assuming it was security information.

He said, "I won't ask for permission."

The CHAIRMAN. Of course, the answer was, he didn't think that was his prerogative to ask for it.

Senator McCARTHY. Well, obviously, it was.

The CHAIRMAN. Let me ask you this: Did you ever ask for the Secretary of Defense, the Secretary of the Army, or the head of G-2 or the President or anyone else that permission be given for this witness to testify?

Senator McCARTHY. No. The day after he testified things broke loose.

The CHAIRMAN. I know, but——

Senator McCARTHY. And we held no further hearings. We have been immobilized ever since. So there was no occasion to ask for permission. In fact, our committee decided to file——

The CHAIRMAN. Well——

Senator McCARTHY. If I may explain, that, Senator, the reason——

The CHAIRMAN. I think you have explained it. I don't know how much more you want to put in.

Senator McCARTHY. Well, I was going to tell you the committee, the special committee which Senator Mundt was chairman of, with me sitting in, decided that we would conduct no further investigation of the Army matter until after the Mundt committee had made its report.

The CHAIRMAN. Well, that——

Senator McCARTHY. The Mundt committee made its report while this committee was in session, so that I have been immobilized ever since.

I do intend to try and get the information. I will try to get it from Zwicker, if I possibly can. I am not too hopeful I will get it.

The CHAIRMAN. The reason I brought the subject up at all was because I wanted to be clear about your position. You have said several times, as I recall your testimony, since you have been testifying, both on direct examination and also in cross-examination, that personnel matters were not security matters.

Now, there may be an argument on that score, whether they are, or are not. I thought you took the general position, and that is the reason why you were pressing him, because you thought he was being evasive—you took the interpretation—that personnel matters were not security matters and he took the interpretation they were security matters, and, therefore, he couldn't talk about this personnel record.

Senator McCARTHY. No, Senator. You are correct to a certain ex-

tent, but he answered most of the questions. You will find it is very seldom in here that he refused to answer. He answered most of the questions, and my objection was not to his refusal to answer, but, rather, to the fact that he was not giving us straightforward, what I would consider honest answers, and when I finally got him to give an honest answer on this question of dismissing a man who promoted Communists—he gave what I assume was his honest answer to that, although he changed that on the next page.

The CHAIRMAN. That is your explanation.

I just wanted to know where you stood on that matter because that is very, very important.

I think the very document we received in evidence indicates that personnel matters many times can be decidedly important security matters.

Senator McCARTHY. You will find, Senator, by checking this record, when he got to the point of refusing—we asked him to try and get permission from the proper authority to give us the facts, and then he refused to ask for that permission, but you will find he did answer practically every question.

The CHAIRMAN. That is all I have.

Mr. DE FURIA. Senator, if it were actually true that General Zwicker had no right under the orders to reveal anything in the Peress personnel file, do you think you were justified in your statements with reference to him and your criticisms of him?

Senator McCARTHY. If he had no right to reveal information, he could have told me.

Mr. DE FURIA. That is not quite the question, sir.

Senator McCARTHY. Well, I think that is an answer to your question.

Mr. DE FURIA. Is that the only answer you care to give, sir?

Senator McCARTHY. I think that is the answer.

Mr. DE FURIA. Now, on page 157, Senator, of the printed copy of the hearing of February 18, I find a question here by Mr. Jones. Who was he, sir?

Senator McCARTHY. Mr. Jones was the administrative assistant to Senator Potter.

Mr. DE FURIA. And, by the way, at this point, who was Mr. Rainville?

Senator McCARTHY. Mr. Rainville was the administrative assistant to Senator Dirksen.

Mr. DE FURIA. I assume, Senator, that you are telling us that they were administrative assistants based upon your best knowledge and belief. Might there be some question about Mr. Rainville?

Senator McCARTHY. Not to my knowledge. Senator Dirksen has referred to him as his administrative assistant. There is no reason why Senator Dirksen would lie to me about that.

Mr. DE FURIA. Very well, sir.

Now, going back to this page 157, Mr. Jones says to General Zwicker:

General, what is your considered opinion of this order here forbidding you to assist this committee in exposing the Communist conspiracy in the Army?

General ZWICKER. Sir, I cannot answer that because it is signed by the President. The President says, don't do it and, therefore, I don't.

Mr. Jones continues:

What is your considered opinion of that order?

You see now, here is a perfectly good example of the Communist being promoted right in the ranks, all because of this Executive order here, in many respects, where we could not get at these things earlier. What is your considered opinion of an order of that nature?

Now, do you think, as chairman, you should have permitted a question of that kind?

Senator McCARTHY. I can see nothing wrong with the question but I would like to go back a step now. I said he did not rely upon the Presidential order. I find here, in answer to Mr. Jones' question, he did rely upon the Presidential order.

I don't think he relied upon that in answer to any of my questions.

Mr. DE FURIA. But General Zwicker replied to Mr. Jones' question, did he not, Senator, "I won't answer that because I will not criticize my commander in chief"?

Senator McCARTHY. He was not ordered to answer that.

Mr. DE FURIA. And, yet, you say he was the most evasive and arrogant, one of the most evasive and most arrogant, witnesses who ever appeared before you?

Senator McCARTHY. That is correct.

Mr. DE FURIA. Now, in all fairness, Senator, aren't you sometimes addicted to hyperbole?

I am saying that in all kindness, sir.

Senator McCARTHY. Am I addicted—

Mr. DE FURIA. I have personal qualities of language that other people don't.

Mr. WILLIAMS. I don't think that is a proper question, Mr. Chairman. I don't think we are here trying anybody for hyperbole.

The CHAIRMAN. He will not be required to answer it.

Mr. DE FURIA. I am sorry I asked the question; I shouldn't, sir.

The CHAIRMAN. That is all right.

Mr. DE FURIA. I meant in all kindness, I assure you.

The CHAIRMAN. I recognize that.

Senator McCARTHY. I am sure you did.

The CHAIRMAN. Being a lawyer myself, I realize sometimes when we get into the warmth of a cross examination, we will use some language that might sound like it was exaggerated. We don't recognize it at the time because we were feeling intense, and all that sort of thing.

So we will let the incident pass.

Mr. DE FURIA. Very well, sir.

Senator, do you have copy of what you said to the press right after the Zwicker hearing in New York?

Senator McCARTHY. No, sir, I do not.

Mr. DE FURIA. May I call to your attention a quotation—

The CHAIRMAN. First, Mr. de Furia, I wonder if you might develop what happened, what occurred, immediately after the recess.

Mr. DE FURIA. Yes, sir.

The CHAIRMAN. Tie it in with the events immediately preceding the end of the hearing.

Mr. DE FURIA. Very well, sir.

Senator, at some point in the Zwicker hearing in New York the reporter stopped taking down the proceedings; is that correct, sir?

Senator McCARTHY. That is correct.

Mr. DE FURIA. Now, did you immediately leave the room or did you stay in the room?

Senator McCARTHY. No. I had a conversation with General Zwicker. I told him that, in view of the fact that he had met the press outside the room—I knew he was there—in view of our practice of giving the press a résumé of what occurred in executive sessions, to avoid a distorted version of it, we would do it in this case and in this case we would divert from the usual practice of not telling who the witness was because they knew he was there and he had talked to them.

I asked him to sit in the jury box right next to where we had the press conference with his aides and listen to what I said and listen carefully. I said, "If I don't give a correct résumé of the facts, I want you to call that to the attention of the press immediately."

The press thereupon came into the room and I gave them a résumé. I asked Zwicker whether he had any corrections to make.

He shook his head. After I left the building, however, he did make some rather uncomplimentary remarks about the press conference, but only after I had left the building.

Mr. DE FURIA. Can you tell us, Senator, what you said to the press?

Senator McCARTHY. I just gave them a résumé of the Zwicker testimony.

Mr. DE FURIA. If you will pardon me, sir, that does not give the committee very much information, to say that you gave a résumé.

Can you tell us actually what you said to the press about General Zwicker and the incident?

Senator McCARTHY. I couldn't recall what I told them on that particular occasion, except the usual practice of giving a very brief résumé.

Mr. DE FURIA. Senator, did you tell the press that you were ordering General Zwicker to come back and that he had better be ready to answer certain questions?

Senator McCARTHY. I may have told him that he was ordered to return. I don't think I told them he would have to be ready to answer certain questions.

Mr. DE FURIA. Senator, did you tell the press that the Zwicker hearing was held principally for the benefit of Bob Stevens?

Senator McCARTHY. I don't remember that. I told the press from time to time that all of the evidence would be supplied to the Secretary of the Army.

The CHAIRMAN. He is confining this, Senator, to this specific occasion.

Senator McCARTHY. It is impossible to pick up one press conference and tell you exactly what was said.

The CHAIRMAN. Well, that is what he is confining it to.

Senator McCARTHY. Yes.

The CHAIRMAN. Of course, if you cannot remember, you can say so, although I do not want to advise you on that, but, at any rate, what the committee wants to know is about this particular press conference and what you said because—

Senator McCARTHY. I don't think I said I was holding it for the benefit of Bob Stevens.

Mr. DE FURIA. Are you sure, Senator?

I mean is it possible you might have said it? I understand you can't remember, but is it possible you might have said it, or is your answer categorically that you did not say it, sir?

Senator McCARTHY. It is highly improbable. I don't think I said it. That is all I can tell you.

I am reasonably certain I didn't say that.

Mr. de Furia, just to be completely frank with you, I might have said these hearings that we were holding were to aid the Secretary of the Army in cleaning house, or something like that, but whether it was said on this occasion, or not, I don't know.

Mr. DE FURIA. You mean cleaning the house for Communists, or cleaning the house for generals, sir.

I don't quite understand.

Senator McCARTHY. Communists and those who protected Communists, promoted them and honorably discharged them.

Mr. DE FURIA. I have tried in my examination, sir, to bring out some mitigating circumstances in the Zwicker case, but apparently I haven't succeeded; is that right, sir?

Mr. WILLIAMS. Just a minute.

Mr. DE FURIA. You are still—

Mr. WILLIAMS. Just a minute, Mr. de Furia.

Mr. Chairman, I don't think that it is Mr. de Furia's prerogative to comment on the testimony. Certainly he can ask all the relevant, competent questions at his command; but I don't think he should be commenting upon this testimony, and I am surprised to hear him do it, and I ask that remark be stricken from the record.

The CHAIRMAN. The Chairman's attention was directed elsewhere, but—

Mr. WILLIAMS. I will try to repeat what he said.

The CHAIRMAN. The reporter—

Mr. DE FURIA. I will admit it should be stricken.

The CHAIRMAN. All right. That ends the incident. It is out.

When I say, "It is out," I say it is stricken. I want to be sure the record stands.

Mr. DE FURIA. Senator, were you authorized by either the major committee or your subcommittee on permanent investigations to reveal what transpired at the Zwicker executive hearing?

Senator McCARTHY. I discussed the matter with the representatives of the two Senators who were present and we agreed, in view of the Stevens' statement, it should be released.

Mr. DE FURIA. You say you discussed it with the representatives of the two Senators?

Senator McCARTHY. That is correct.

Mr. DE FURIA. In spite of the rules of your own committee that all testimony taken in executive session shall be kept secret and will not be released or used in public session without the approval of the majority of the subcommittee?

I felt that the two men who were present were representing the Senators, and they constituted a majority. There were only four Senators on the committee at that time.

Mr. DE FURIA. In a matter involving a general of the United States, then, you permitted an administrative assistant to exercise the prerogatives of the United States Senate?

Senator McCARTHY. I think I have recited the facts to you.

Mr. WILLIAMS. I want to say this, if I may, Mr. Chairman. I have just been told—and I think it is important for the record—

The CHAIRMAN. Just a moment. Are you objecting?

Mr. WILLIAMS. I am just trying to straighten out a very material matter, which probably should be accurately stated on the record, that Mr. Ranville, I am told, was an acting administrative assistant. Now, we will verify that information. I think there is testimony here that he was an administrative assistant. I am told that is correct.

Mr. DE FURIA. We will check that.

The CHAIRMAN. It may be that at that time he had no official status. I do not know whether that is true or not.

Mr. WILLIAMS. We will find out.

The CHAIRMAN. I do not know whether it was true or not, but I merely mentioned it, since you brought it up.

Senator McCARTHY. May I say further, Mr. de Furia, in answer to your question, that General Zwicker had already released a distorted version of the testimony, through Bob Stevens, in affidavit form. I felt under the circumstances that the correct version should be released.

Mr. DE FURIA. Why, Senator, you released this first 2 or 3 minutes after your hearing concluded; did you not?

Senator McCARTHY. No; I did not. It was the transcript.

Mr. DE FURIA. You called in the press, did you not, right away?

Senator McCARTHY. I did not.

Mr. DE FURIA. To tell them what had happened in the executive session?

Senator McCARTHY. Mr. de Furia, if you want to know what the practice was here, and what the practice is—

Mr. DE FURIA. I do not want the practice.

Senator McCARTHY. I did not release the transcript.

Mr. DE FURIA. I am not talking about the transcript. But you did tell the press what happened in the closed executive session, within a few minutes after that session ended?

Senator McCARTHY. I gave them a resume of the testimony; yes.

Mr. DE FURIA. Sir, I am asking you, Upon what authority, or by what right, you did that?

Senator McCARTHY. Because that has been our practice.

Mr. DE FURIA. In spite of the rule of your own committee?

Senator McCARTHY. That has been the practice of the committee.

Mr. DE FURIA. General Zwicker's affidavit was not made until 2 days later; isn't that right, Senator? It is dated February 20.

Senator McCARTHY. I don't know what date it is dated, but the transcript was not released until after the distorted version of the testimony given by Zwicker.

Mr. WILLIAMS. Do you have the rule, there, Mr. de Furia?

Mr. DE FURIA. Yes; I have the rule, and I would like to have it in evidence, if the chairman please.

The CHAIRMAN. It will be received.

The rules of procedure adopted by the Committee on Government Operations, which is shown in an extract of the minutes of the meeting of the Committee on Government Operations, January 14, 1953, will be placed in the record at this point by having Mr. de Furia read into the record those rules.

Mr. DE FURIA. Mr. Williams, I do not know, sir, whether you have seen these. May I show them to you? I want to be sure they are a copy of the correct rules.

The CHAIRMAN. May I ask, Mr. de Furia, that I may reserve the ruling, until I ask 2 or 3 questions?

Mr. deFuria, where did you get this copy?

Mr. DE FURIA. I think Senator McCarthy's office sent it up, in reply to a request from one of our staff.

Senator MCCARTHY. Mr. Chairman, so the chairman may have the complete situation in respect to this, I may say we have had a meeting of the committee to discuss whether or not this practice should be followed—the practice of briefing the press after an executive session. The committee has made no final decision on it. They have been informed that the practice will continue, unless there is a decision made against it. I merely mention it to show that this was done with the approval of the committee.

The CHAIRMAN. Where was this conference held, that you are talking about?

Senator MCCARTHY. I held it after the Democrats came back on the committee. While we had only the Republicans on, they were aware of it, and there was no disapproval of it. May I—

The CHAIRMAN. I think that is enough on the rule question at the moment.

Mr. DE FURIA. Mr. Chairman, I offer in evidence, and ask that it be read in or made a part of the record, the rules of procedure adopted by the Committee on Government Operations, an extract from the minutes of a meeting of the Committee on Government Operations on January 14, 1953.

The CHAIRMAN. The Chair has already directed that that may be done, so there is no challenge to the correctness of the item, or at least of the correctness of the copy. You may proceed.

Just a moment. Get that in the record at this particular point.

Mr. WILLIAMS. Mr. Chairman, I think the only pertinent rule is the rule on testimony, that a transcript of testimony may not be released without a majority vote. I do not say that all of those are rules of the committee.

Mr. DE FURIA. I would like to read them, just to show what they are.

The CHAIRMAN. I do not see how it could possibly do any damage.

Mr. DE FURIA. I agree.

Mr. WILLIAMS. All right.

Mr. DE FURIA. Rules of practice adopted by the Committee on Government Operations; extract from the minutes of the meeting of the Committee on Government Operations, January 14, 1953.

Quorum: For the purpose of taking sworn testimony in full committee, the committee adopted a rule that three members thereof shall constitute a quorum for the purpose of taking sworn testimony by a subcommittee. The committee adopted a rule that one member of any subcommittee shall constitute a quorum.

Proxy: The committee adopted the following rule with respect to proxy, restricting the form of proxy, when record evidence is taken by them on any bill, resolution, or amendment—

Senator MCCARTHY. Those are not the rules of the subcommittee.

Mr. WILLIAMS. Senator McCarthy says these are the rules of the parent committee.

The CHAIRMAN. They are all together. I know that you have the rules of the parent committee or parent body, as well as the subcommittee. The members of the Senate may want to know what all the rules are. I do not see why it should not be in the record.

Senator McCARTHY. If you want the rules of the subcommittee, I can have some staff member get those.

The CHAIRMAN. These were rules adopted by the full committee, as I understand it, from the notation in the copy.

Mr. DE FURIA. Shall I continue the offer, sir?

The CHAIRMAN. Just a moment.

The question was raised—

Senator McCARTHY. I think you might want the rules adopted by the subcommittee.

I have no objection to their being read in, but I wanted you to know they were not the rules of the subcommittee.

The CHAIRMAN. They are rules adopted at a meeting of the full committee, and apparently it was adopting the rules for the subcommittee, too.

At any rate, they purport to be, and it was a copy furnished by you.

Senator McCARTHY. I have no objection to their being read in.

The CHAIRMAN. It will be put in the record.

Mr. DE FURIA (reading):

RESTRICTED FORM OF PROXY

When a record vote is taken in committee on any bill, resolution, amendment, or other question, a majority of the members being present, a member who is unable to attend the meeting may submit his vote by proxy, in writing.

Such proxy shall be addressed to the chairman and filed with the chief clerk. It shall contain sufficient reference to the bill, resolution, or motion as is necessary to clearly identify the proposal, and to inform the committee as to how the member wishes his vote to be recorded thereon. Such proxy shall then be counted officially in the final tabulation of that vote.

The chief clerk shall be required to insert such proxies in the minutes of such meeting as a permanent record.

RULES OF PROCEDURE FOR THE SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATION

1. No major investigation shall be initiated without approval of a majority of the subcommittee or approval of the majority of the full committee on government operations. However, preliminary inquiries may be initiated by the subcommittee staff with the approval of the chairman of the subcommittee.

2. Subpenas for attendance of witnesses and the production of records shall be issued by the subcommittee chairman, or other members designated by him.

3. Executive hearings shall be held only with the approval of the chairman of the subcommittee. This authority may be delegated by the chairman to other members of the committee when necessary.

4. Public hearings shall be held only with the approval of the majority of the subcommittee or with the approval of a majority of the full committee.

5. An exact and accurate stenographic record shall be kept of the testimony of all witnesses in executive and public hearings.

6. All testimony taken in executive session shall be kept secret and will not be released or used in public session without the approval of a majority of the subcommittee.

7. Any witness summoned to a public or executive hearing may be accompanied by counsel of his own choosing who shall be permitted while the witness is testifying to advise him of his legal rights.

8. Any person who is the subject of an investigation in public hearings may submit questions for the cross-examination of other witnesses called by the subcommittee by submitting such questions in writing to the chairman. With the consent of the majority of the subcommittee then present these questions will be put to the witness by a member or counsel of the subcommittee.

9. Any witness desiring to make a prepared or written statement in executive or public hearings is required to file a copy of such statement with the counsel or chairman of the subcommittee 24 hours in advance of the hearing at which the statement is to be presented.

10. No report shall be made to the Senate or released to the public without the approval of the majority of the subcommittee or by a majority of the full committee.

The CHAIRMAN. At this point, the committee will be in recess for 15 minutes.

Senator McCARTHY. Could I first tell Mr. de Furia—

Mr. DE FURIA. I am sorry, sir.

The CHAIRMAN. This will not be in the record unless I withdraw the order. Is it important?

Senator McCARTHY. Yes, it is a qualification of the answer.

I have just been informed by my staff that my chief of staff, Mr. Carr, did get permission from a majority of the members of the committee to release this testimony. We are checking with him now. I will inform you at the end of the recess whether that is correct, or not.

The CHAIRMAN. We will have to call Mr. Carr as a witness, probably.

Senator McCARTHY. I can check with him very easily.

(Whereupon, at 3:05 p. m., a recess was taken until 4:30 o'clock p. m.)

The CHAIRMAN. The committee will resume session.

Senator McCARTHY. Mr. Chairman, I would like to qualify some information I gave you previously on two points.

The CHAIRMAN. Just a minute.

Had you finished, Mr. de Furia?

Mr. DE FURIA. No, sir; I had 3 or 4 more questions.

The CHAIRMAN. I am going to permit you to do it, but I was going to find out if he was through and if he is, you in turn can take over. There are other categories you have not been examined on.

Senator McCARTHY. Right.

The CHAIRMAN. I think you had better go ahead, then, now.

Senator McCARTHY. I would like to qualify an answer I gave Mr. de Furia.

Actually, the Democrats were back on the committee at the time of the Zwicker matter. So we had a seven-man committee. My chief of the staff, Mr. Carr, tells me—

The CHAIRMAN. Just a moment.

I think maybe we had better call Mr. Carr. If you have something you could call him.

Senator McCARTHY. I wanted to tell you what he will—

The CHAIRMAN. I know, but that is not proper under the rules we have set down.

Senator McCARTHY. Could I do it off the record?

The CHAIRMAN. I do not think you ought to do it on or off the record. We are attempting to keep within the rules we have laid down here.

Senator McCARTHY. I wanted to tell you what he was trying to do.

The CHAIRMAN. In other words, we are going to let Mr. Carr tell the story that you have made reference to, the matter you mentioned before.

Senator McCARTHY. No. 2, I would like to qualify another matter.

I made the statement, I think, that I felt Zwicker was relying solely upon an Army order. I find, however, that on page 155, first referring to page 149, he was asked:

Did you take any steps to have him retained until the Secretary of the Army could decide whether he should be court-martialed?

The answer:

No, sir.

But then on page 155, when asked that question again, he relied upon the Executive order. So that Zwicker did rely upon the Executive order at times.

The CHAIRMAN. I will say, Senator, if you have some testimony from Mr. Carr, we would like to call him to testify about the matter you had reference to.

If you indicate he is to be a witness, let us know, and we will call him.

Senator McCARTHY. I merely wanted to qualify—I made an answer, Mr. Chairman. I don't argue this other point. I made the answer saying that I relied upon the administrative assistants, and I was going to tell you that Mr. Carr was checking with the telegraph company to find if we did not send wires to all seven Senators to get permission.

He wouldn't know that for some time.

The CHAIRMAN. All right, we can take it up when he gets the information.

You may proceed, Mr. de Furia.

Mr. DE FURIA. Now, Senator, didn't General Zwicker at the hearing before you, sir, try to read into the record the Presidential and the Executive orders which prohibited him from replying to some of your questions?

Senator McCARTHY. Will you refer to the transcript so I can check that?

Mr. DE FURIA. The last 2 or 3 lines, sir, on page 157.

Senator McCARTHY. He says, if you care to have me, I will cite certain other portions of this. I said, "You need cite nothing. You may step down."

Mr. DE FURIA. Didn't he have the orders in his hands or copies of the orders in his hands at that time, Senator, and you said, "You need cite nothing; you may step down?"

Senator McCARTHY. I said exactly what I read to you, Mr. de Furia.

Mr. DE FURIA. I am asking you, sir, didn't he at that time have in his hand showing to you copies of the orders which restricted his testimony, sir?

Senator McCARTHY. I don't know, but I assume if he was going to read something, that either he or his aide had them.

Mr. DE FURIA. Did you have in your files at that time copies of the same order that he tried to read?

Senator McCARTHY. I think we had copies of all of the Executive orders.

Mr. DE FURIA. And the Presidential orders.

Senator McCARTHY. I think we had.

Mr. DE FURIA. Now, Senator, did you receive a letter from Secretary of the Army Stevens dated February 16, 1954, in reply to a letter from you to Secretary Stevens dated February 1, 1954?

Senator McCARTHY. I am afraid you would have to show me a copy of that.

(Mr. de Furia handed a document to Mr. Williams.)

Senator McCARTHY. Is this an extra copy of that?

Mr. DE FURIA. Yes, I got that from Mr. Williams, sir, and you may retain it.

Senator McCARTHY. This seems to be a copy of the letter that I received from Bob Stevens.

Mr. DE FURIA. When did you receive it, Senator?

Senator McCARTHY. I wouldn't know. The date here is February 16, so I assume it would have been the 17th or 18th.

Mr. DE FURIA. You did have it, did you not, Senator, before the hearing before General Zwicker testified in New York?

Senator McCARTHY. I don't think so. No, I am reasonably certain we did not have this letter.

Mr. DE FURIA. Do you remember that John Adams gave you another copy of the letter on the morning of February 18, 1954, Senator?

Senator McCARTHY. No, I don't remember that.

Mr. DE FURIA. Are you sure you did not have a copy, sir, at the hearing before General Zwicker was called as a witness?

Senator McCARTHY. I don't think I had a copy. If I were handed a copy, I wouldn't have had time to read it anyway, because I was busy that morning. That is the morning that I had been over to the hospital, took my wife over there, rushed back to the hearing. I was late, and I wouldn't have had time to read a four-page letter.

Mr. WILLIAMS. I think you were confused when you said I gave you this; I didn't give you this.

Mr. DE FURIA. I got the copy for you.

Mr. WILLIAMS. I am very sorry; I thought you said you got it from me.

Mr. DE FURIA. No.

Senator, I would like to have an answer to this question: Did you have this letter from Secretary Stevens before you examined General Zwicker?

Senator McCARTHY. I don't think so.

Mr. DE FURIA. Are you positive, sir?

Mr. WILLIAMS. I think he has answered the question.

The CHAIRMAN. I think he has answered the question.

Mr. DE FURIA. Very well, sir.

Did you make a speech in Philadelphia, Senator McCarthy, right after the Zwicker hearing?

It was at a luncheon at the Sons of the American Revolution chapter.

Senator McCARTHY. I made a speech in Philadelphia; I don't recall the date.

Mr. DE FURIA. Did you read part of the transcript of the testimony of the executive hearing of General Zwicker at that luncheon meeting?

Mr. WILLIAMS. What was the date of that?

Mr. DE FURIA. I think it was either the 21st or the 20th, Mr. Williams; I am not sure.

Senator McCARTHY. I may well have. I consistently used documents in speeches.

Mr. DE FURIA. Well, I think this—I won't say. You say you may have read part of the testimony of General Zwicker taken at an executive session at a luncheon; is that correct, sir?

Senator McCARTHY. I don't know. I don't remember what I said at that speech.

Mr. WILLIAMS. Do you have anything there to refresh his recollection on that, Mr. de Furia?

Mr. DE FURIA. Only a newspaper article, sir; that is all; but we will check into it.

Mr. WILLIAMS. May we see that?

Mr. DE FURIA. Yes, I will be glad to show you the article.

(Mr. de Furia shows Mr. Williams a paper.)

Senator McCARTHY. Can I answer you, Mr. de Furia?

Was this after the transcript was made public?

Mr. DE FURIA. Apparently so. The article says you read portions of the transcript at the luncheon.

Senator McCARTHY. I am curious. I am not trying to cross-examine you, but the transcript was made public after Zwicker's affidavit and I wondered if you would know whether this was after that or not.

Mr. DE FURIA. Apparently it was, Senator; I can only fix the date from the news story which is the 22d and apparently your speech was either the 21st or that same day, sir.

Senator McCARTHY. I may well have read portions.

Mr. de Furia?

Mr. DE FURIA. Yes, Senator.

Senator McCARTHY. I made an off-the-cuff speech at that time, and I very honestly cannot tell you what I said, or what transcripts or what documents I read from. I just wouldn't know and I wouldn't attempt to swear to it under oath.

The CHAIRMAN. Did you discuss the appearance of General Zwicker before the committee at this executive session in New York, the one in question?

Senator McCARTHY. Senator Watkins, I make a great number of speeches and I make them off the cuff. This was off the cuff. I do not know what I discussed.

The CHAIRMAN. I wanted to be sure about that. If you do remember, and I realize that you do make a lot of speeches and it is difficult to remember those things, all I can ask you to do is to do the best you can to give us the information.

Senator McCARTHY. I might well have discussed the Zwicker case at that time.

The CHAIRMAN. What was the date of that article in the newspapers?

Mr. WILLIAMS. Dateline February 22.

Mr. DE FURIA. February 22, 1954; yes, sir.

Mr. WILLIAMS. It sounds like a Washington Birthday speech.

Mr. DE FURIA. Senator, can you affirm or deny that at that speech, in discussing the General Zwicker case, you said:

As I look over it today, I was too temperate. If I were doing it today I would be much stronger in my language.

Senator McCARTHY. As I say, I just cannot recall what was said in this off-the-cuff speech. There was no prepared transcript. I made notes during the luncheon, as I recall, and I gave a speech. That is all I can tell you.

Mr. DE FURIA. May we have a minute, sir?

The CHAIRMAN. Yes.

At this point the committee would like, as a matter of courtesy to Senator Hayden, whom we would like to call as a witness, to interrupt this particular examination and ask Senator Hayden to come in. He wants to leave for Arizona and it is a matter of record that we want to go into.

Is there any objection on the part of Senator McCarthy?

Senator McCARTHY. How long will his testimony take?

The CHAIRMAN. Why, it should not take very long. It is on some record matters in connection with the committee. He has his reservation to leave.

Mr. WILLIAMS. Maybe we can stipulate to them.

The CHAIRMAN. Well, they are not all record matters. Some of it is, and some of it is not.

Senator McCARTHY. I think as a courtesy to Senator Hayden that we will have no objection to the interruption, Mr. Chairman.

Mr. WILLIAMS. I was wondering whether or not it would be necessary for us to remove all these documents.

The CHAIRMAN. If you can allow him to have a place at the table there—can you swing this microphone in front of the table and he can testify from there? We will have to call Senator Hayden. It may take a moment or two for him to come.

If there are some matters you want to go into, Mr. de Furia, we can go into them until Senator Hayden gets here.

Mr. DE FURIA. No, I have none, Mr. Chairman.

May I revise that answer, Mr. Chairman?

There is a letter from Senator Guy M. Gillette to Senator Carl Hayden, dated September 10, 1952, which is exhibit No. 37 in the Hennings-Hayden-Hendrickson report that I think we all agreed, Mr. Williams, should go into the record, and I would like to read it in at this time.

Mr. WILLIAMS. I am sorry. What page is that?

Mr. DE FURIA. That is page 95, exhibit 37.

I believe you referred to the exhibit.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. That has been placed in the record, and it will appear in the hearing report at the point where the matter was referred to by Mr. Williams.

Mr. DE FURIA. Yes, sir.

The CHAIRMAN. Proceed.

There is one item that Senator Case asked that the committee have placed in the record that I think Mr. Chadwick can take care of at this moment.

Mr. CHADWICK. Mr. Chairman, we examined the sequence of dates, the chronology between the different dates upon which matters critical of Senator Flanders were mentioned and the dates of three speeches. The purpose of this was to determine the relative importance of the three speeches in connection with the remarks which were made afterward by Senator McCarthy.

We find that the first——

The CHAIRMAN. You have checked that from the records, have you, the records of which we can take judicial notice?

Mr. CHADWICK. Yes, sir.

We have the dates of the remarks from our testimony and we have the dates of the speeches from Mr. Williams, supplied by Mr. Williams, when he offered them in evidence.

Mr. WILLIAMS. I don't understand what you are reading into the record.

Mr. CHADWICK. Well, Mr. Williams, the situation is this: Some of the members of the committee were uncertain whether all of the three speeches which you offered in evidence, speeches made by Senator Flanders, could have had relativity——

Mr. WILLIAMS. Yes.

Mr. CHADWICK. To subsequent remarks, and I can shorten this by saying our investigation indicates that the third speech, the speech——was it July 20?——the third of the three speeches you mentioned——came after all the events of criticism of Senator Flanders by Senator McCarthy.

Mr. WILLIAMS. Are you saying only the first two antedated the colloquy in question?

Mr. CHADWICK. Well, you see, the criticism was expressed on June 1 and June 2.

Mr. WILLIAMS. I will so stipulate that, if that is what your investigation shows.

Mr. CHADWICK. The second and third were as of June 11, according to my investigation.

Mr. WILLIAMS. If you say that, I will stipulate to it.

Mr. CHADWICK. Yes. Well, the whole purpose is to define for the benefit of the chairman whether or not the last of the three speeches——

Mr. WILLIAMS. I understand that, Mr. Chadwick, and I have so stipulated.

Mr. CHADWICK. Well——

Mr. WILLIAMS. I have stipulated that your statement on the dates is absolutely correct.

Mr. CHADWICK. I am only trying to say, sir, the matter now becomes one for the chairman.

The CHAIRMAN. Just a moment.

You say the last speech referred to there came subsequent to the criticisms of Senator Flanders by Senator McCarthy?

Mr. CHADWICK. Yes, sir.

The CHAIRMAN. But not on the same day as the last criticism?

Mr. CHADWICK. No, sir.

Mr. WILLIAMS. I have so stipulated. Since Mr. Chadwick has corrected the record in that respect, and since he says he has checked the dates, I don't have any question about it. So I don't see——

The CHAIRMAN. All right. We will clear that in the record by stipulation.

I have a question in my own mind. It seemed to me the last one was on the same day.

Mr. WILLIAMS. I had thought so yesterday when I offered them.

TESTIMONY OF SENATOR CARL HAYDEN

The CHAIRMAN. Senator Hayden is now present and ready to be examined.

So, Senator, will you stand and be sworn?

Do you solemnly swear the testimony given in the matter now pending before the committee will be the truth, the whole truth and nothing but the truth, so help you God?

Senator HAYDEN. I do.

The CHAIRMAN. For the record, you may state your name.

Senator HAYDEN. Carl Hayden.

The CHAIRMAN. You are a Member of the United States Senate?

Senator HAYDEN. United States Senator from the State of Arizona.

The CHAIRMAN. How long have you been a Member of the Senate?

Senator HAYDEN. Since 1927.

The CHAIRMAN. You may proceed, Mr. Chadwick.

Mr. CHADWICK. Senator, I wish to call to your attention the circumstances which surrounded the resignation of Senator Welker from the subcommittee which is a subject matter before this committee. You are familiar with the subject matter which I discussed with you today.

Senator HAYDEN. Yes.

Mr. CHADWICK. Senator, will you state, in your own way and in your own words, the problem which was presented to you as chairman of the parent committee, the main committee, what events occurred in the way of resignations or otherwise to present a problem, and how you, in your capacity as chairman, disposed of that problem?

Senator HAYDEN. I received advice of the resignation of Senator Gillette—

The CHAIRMAN. If you will get a little closer to the microphone, Senator Hayden—

Senator HAYDEN. I was advised of the resignation of Senator Gillette and Senator Welker by mail, which I received in Phoenix, Ariz., and at that place accepted both resignations.

I realized, by reason of a suggestion made in Senator Gillette's letter, that the subcommittee might continue as 3 rather than to make it 5, that there was a question there. So, I directed the clerk of the committee, Mrs. Grace E. Johnson, to inquire of the Parliamentarian of the Senate as to what the situation would be, and I received from her this memorandum, which I am prepared to read. It is addressed to me and says—

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. I would like to see it, if I may, before it goes in.

The CHAIRMAN. Will you please submit it to Mr. Williams?

Mr. WILLIAMS. Thank you, Senator.

Mr. Chairman, this is a memorandum by Grace E. Johnson, as Senator Hayden has just indicated, recounting a conversation which she says she had with the Parliamentarian, in which she undertakes to set out the law on this subject as she understands it from her conversation with the Parliamentarian.

I just don't see how this could go in if we are still adhering to the hearsay rule.

The CHAIRMAN. I think your exception or your questioning of the document is well taken.

I think we can call Charley Watkins, the Senate Parliamentarian, if he is physically able to come now. He has been ill for some time. If we can't get him, we can probably get his assistant, who has been the Acting Parliamentarian for some time.

Mr. CHADWICK. Mr. Chairman, in order to make it possible for the Senator to proceed with his statement, I would like to be permitted to ask him, refreshing his recollection, what was his understanding of the situation with respect to the applicable rules which would guide him in the next matters to which he will testify.

The CHAIRMAN. That may be permitted. He may have that for the purpose of refreshing his recollection, but for the purpose of the record, I want to ask you a question, Senator.

Senator HAYDEN. Certainly.

The CHAIRMAN. The time we are talking about now you were the chairman of the full Committee of Rules and whatever else goes to that time of the Senate?

Senator HAYDEN. Yes, sir.

The CHAIRMAN. How long had you been at that time chairman of that committee?

Senator HAYDEN. Since the beginning of the 81st Congress.

The CHAIRMAN. That is in 1949?

Senator HAYDEN. Yes.

The CHAIRMAN. In January 1949?

Senator HAYDEN. Yes.

The CHAIRMAN. And when was this item——

Senator HAYDEN. This was 1952.

The CHAIRMAN. 1952?

Senator HAYDEN. This was in November.

Mr. WILLIAMS. Senator, I merely wanted to make my position clear. I think the Senator is clearly competent, of course, to testify to what action he took, but I do not think he should testify here with respect to what the Parliamentarian is qualified to do.

The CHAIRMAN. I do not expect him to testify to that, and I have already indicated that I will require—that is, the committee will require; of course, when I speak, I am speaking for the committee—testimony on that point, because some members of the committee are interested in it, some questions have been raised. We want to get all the evidence that we can that is material with reference to the points and issues raised.

All right, you may proceed as indicated by Mr. Chadwick.

Senator HAYDEN. Well, I made inquiry to find out what was the proper thing for me to do, and asked the clerk of the committee to ascertain from the Parliamentarian what he thought I should do under those circumstances.

The CHAIRMAN. Now, Senator, in view of the questions that have been raised, you will not be permitted to tell what the Parliamentarian said. In the way that you received it, then, we will have to have the Parliamentarian himself here to give us information on that point, and, if he recalls this conversation, he probably could tell us what your clerk did.

What is her name?

Senator HAYDEN. Mrs. Johnson.

The CHAIRMAN. Mrs. Johnson is the clerk of the committee?

Senator HAYDEN. Yes.

The CHAIRMAN. The chief clerk?

Senator HAYDEN. She was the chief clerk regularly employed on the committee; and I asked her, as part of her duty, to get this information for me; which she did.

The CHAIRMAN. You may tell what she did, but you will not be permitted to tell or read what is in that memorandum.

Senator HAYDEN. Well, from the information I received, I became convinced that 3 members of the committee of 5 could function as a committee; and therefore, that it was unnecessary for me to appoint 2 other members, to make a full committee of 5, because 3 was a majority of 5; and therefore, I did not proceed to appoint. I had great difficulty, being out in Arizona, in coming back here when Congress was not in session, to obtain Senators who were members of the Senate Committee on Rules and Administration to serve on a committee; so I just left it as a committee of three.

Senator CASE. Mr. Chairman.

The CHAIRMAN. Let him finish that sentence. Have you finished that sentence?

Senator HAYDEN. I left it a committee of three.

The CHAIRMAN. All right now, Senator Case.

Senator CASE. Mr. Chairman, when he refers to the committee, to what committee does the Senator refer?

Senator HAYDEN. The Subcommittee on Privileges and Elections.

Senator CASE. Which was a subcommittee of the Committee on Rules and Administration?

Senator HAYDEN. Of which I was the chairman.

Senator CASE. That is all.

Senator HAYDEN. Well, I came back to Washington, and on arrival here, or very shortly afterward, I found that Senator Monroney, a member of this subcommittee, had left to go to Europe, and that left but 2 members on the committee who could serve; and I did not think that 2 were enough out of 5 to do the work of the committee; so I endeavored to ascertain what had happened to him, and when he was going to come back, and so I learned that he had sailed for Italy, and I took the opportunity, then, through the trans-Atlantic service of the State Department, to try to ask him, and this is the message that I gave to the State Department, which I now read. It is addressed to Mike Monroney:

Subcommittee on Privileges and Elections cannot function without three members. Hope you can fly back to Washington, but if not, radio me your resignation from subcommittee so I can appoint a member in your place.

That was signed:

Senator Carl Hayden, chairman, Senate Committee on Rules and Administration.

That message was delivered to Senator Monroney in Italy at some point in southern Italy, I understood. Then I received from the State Department, under date of November 20, the following letter:

DEAR SENATOR HAYDEN: Here follows the text of the message from Senator Monroney, forwarded to the Department through the United States Embassy in Rome:

"For Senator Carl Hayden, from Senator A. S. Mike Monroney.

"As per your request, this is my resignation from the Elections and Privileges Subcommittee. This is, of course, in reply to your message, which the Department dispatched on November 19."

The above quoted message was telephoned to your office immediately upon receipt.

Sincerely yours,

DAN H. BROWN, Jr.,
Acting Assistant Secretary.

And it was addressed to me. Under those circumstances, then, I took this action.

On November 20, I addressed a letter, as follows:

"Mr. DARRELL ST. CLAIRE,
*Clerk, Senate Committee on Rules and Administration,
Senate Office Building, Washington, D. C.*

DEAR MR. ST. CLAIRE: Please make it of record that I have received the resignation of Senator A. S. (Mike) Monroney as a member of the Subcommittee on Privileges and Elections, which is hereby accepted, and that I hereby appoint myself as a member of that Subcommittee.

Very sincerely yours,

CARL HAYDEN,
Chairman, Committee on Rules and Administration.

Copy of resignation attached.

Mr. CHADWICK. Senator, did that subcommittee, so constituted, continue to function for the rest of the year, and until its successor committee took over?

Senator HAYDEN. In January of 1953.

Mr. CHADWICK. You participated with the other members of the committee?

Senator HAYDEN. I did.

Mr. CHADWICK. Under Senator Hennings?

Senator HAYDEN. Senator Hennings was chairman.

Mr. CHADWICK. Incidentally, from your knowledge can you say whether or not that committee has been continued thereafter until the present time as a committee of three?

Senator HAYDEN. It has.

Mr. CHADWICK. Was Senator Gillette's recommendation, in his letter, given consideration by the committee, both the subcommittee and the parent committee?

Senator HAYDEN. That is the effect of it; yes.

Mr. CHADWICK. Senator Hayden, there was attached to the record of the Hennings-Hayden-Hendrickson report, as filed, I think, on January 2, a loose paper. Will you explain to this committee what significance attached to that paper, which we find attached to the formal copies of the report, at all points?

The CHAIRMAN. Just before you answer that question, may we have the paper referred to, Mr. Chadwick? Let the paper be identified.

Mr. CHADWICK. Mr. Chairman, the convenient copy of the report of the addenda to subcommittee report on Senate Resolution 187 and Senate Resolution 304 appears in volume 1034 of the Senate hearings of 1953, from the Senate Library. I will be very glad to show this to Mr. Williams. I hope, in the interest of time, he may agree with this published addenda, which was found and is found in the committee report, so Senator Hayden may explain what it means.

Mr. WILLIAMS. It is there, I agree.

The CHAIRMAN. If it was contained in the report, it was a loose-leaf stuck in the report, as I understand it.

Mr. WILLIAMS. That is right.

The CHAIRMAN. At least, that is the way it came to me. I remember when I received a copy of it.

Mr. CHADWICK. Senator, I show you a printed copy of the addendum, and inquire whether that is the one to which you are referring?

Senator HAYDEN. We had finished——

The CHAIRMAN. You are identifying this; and that is the addendum to the report?

Senator HAYDEN. This is the addendum.

The CHAIRMAN. Can you explain how that got there, and the significance of it?

Senator HAYDEN. Yes.

The CHAIRMAN. Proceed.

Senator HAYDEN. We had finished our work with three members of the subcommittee.

The CHAIRMAN. Now, name those members.

Senator HAYDEN. Senator Hennings, chairman, Senator Hendrickson, and myself.

The CHAIRMAN. You were the acting members of this Subcommittee on Privileges and Elections of the Committee on Rules and Administration?

Senator HAYDEN. That is correct; and we had finished our main report. We had great difficulty in doing that, I would say, Mr. Chairman, because some of us could be in town all the time, and some of us could not; and Senator Hendrickson had to go up to New Jersey to keep an appointment at that time. But we finally finished it, and then he sent down this addendum and said that he wanted to have it included in the report; and Senator Hennings and I agreed it should be done.

We made inquiry at the Government Printing Office, and were informed it was impossible to have it printed as a part of the report, because the report was in the bindery, and you could not take it apart and insert the page; and so we directed them that this addendum, this loose leaf, be printed by the Government Printing Office, to be included in every copy and sent up for delivery; and that is the way it was done.

The CHAIRMAN. Now, will you read that?

Senator HAYDEN. It reads:

The foregoing report is based substantially upon testimony and exhibits which were presented before the Subcommittee on Privileges and Elections. However, because of the lack of continuity in the committee membership and delays beyond the control of the present membership of the committee, its preparation has given us great concern as a number of its aspects have become moot by reason of the 1952 election. Such facts therein as were known to the people of these States particularly affected, have been passed upon by the people themselves in the election. Thus, as we pass our studies on to our colleagues of the incoming session, we want the Senate of the United States to understand that the committee's efforts have been harassed by a lack of adequate time and lack of continuity in the committee membership.

There will be forthcoming in the next few days a committee report embodying suggestions on remedial legislation affecting election laws and procedures.

Mr. CHADWICK. Senator, you signed that report?

Senator HAYDEN. Yes; I signed that report.

Mr. CHADWICK. Senator Hendrickson signed it?

Senator HAYDEN. He did.

Mr. CHADWICK. And the chairman, Senator Hennings, signed it?

Senator HAYDEN. He did.

The CHAIRMAN. Was the report signed—I am asking this question—before this addendum was sent down?

Senator HAYDEN. Yes; and the addendum came afterward, after we had all signed the report. Senator Hennings and I stood by Senator Hendrickson on the addendum. That is the way it was done.

The CHAIRMAN. This language is the language Senator Hendrickson sent to the committee, asking that it be attached as part of this report?

Senator HAYDEN. Exactly as he wrote it, and exactly as we received it.

Senator CASE. Mr. Chairman, I think the record should show whether Senator Hayden and Senator Hennings endorsed the addendum, referred to in an earlier statement of the report of the committee. The point was made on some of the language of the addendum. That is, all the language has not been clearly identified. It does appear that Senator Hendrickson wrote it. I should like to have the record show whether or not Senator Hennings and Senator Hayden also endorsed it as a part of the report.

Senator HAYDEN. We had to, if we ordered it included in the report; and that is what we did. We said, "If the Senator wants this in, we would agree to put it in, so that it would become a part of the record."

The CHAIRMAN. I am glad to have that. It has always puzzled me, how that sheet got stuck in a report.

Senator HAYDEN. Well, it was due entirely to the fact that the report was in the bindery, and it could not be included in the regular way.

Senator CASE. Mr. Chairman, I have further questions, but I do not want to interrupt. Before the Senator leaves, I want to ask some further questions.

Mr. CHADWICK. I have no further questions of the Senator, and I was going to ask if the chairman would make inquiry of other members of the committee, as to whether they have any questions.

The CHAIRMAN. The Chair will turn the cross-examination over, first, to Mr. Williams.

Mr. WILLIAMS. Mr. Chairman, since his relates to a matter of Senate committee procedure and practice, I am going to ask Senator McCarthy if he wants to ask any questions on it.

Senator MCCARTHY. I have a very few.

Senator, I wonder if you would just hand me those letters. I refer to the one Monroney is on.

(The documents were handed to Senator McCarthy.)

Senator MCCARTHY. Senator, I just have 1 or 2 questions to ask of you. The Chair may rule that you are not qualified to answer these and it should be the parliamentarian; I don't know. So I would like to have the Chair's close attention to this.

The CHAIRMAN. Do you think he is qualified to answer them?

Senator MCCARTHY. Well, I would like to get his reasoning on it, if I could.

The CHAIRMAN. All right; proceed.

Senator MCCARTHY. I have always been under the impression that the chairman could neither increase nor decrease the size of the com-

mittee. Is it your opinion that the Chair can decrease the size of the committee?

Senator HAYDEN. No, the committee, as I understood it, at all times, was a committee of 5, but that 3 members being a majority of the 5, could continue to function as a committee of 5.

Senator McCARTHY. Then we get to the next question.

Again, I was of the opinion that the Chair only had the power to nominate members of a subcommittee and that they had to be confirmed by the full committee, otherwise they were not members of the subcommittee. Would you agree with me on that?

Senator HAYDEN. No, I would not, in the event that Congress was not in session. Ordinarily, in making appointments to subcommittees, as a member of the Committee on Rules and Administration, I would divide them partywise, select three Democrats and then inquire of the ranking Republican who he wanted, and then make the appointments and notify the committee that I had appointed the subcommittee of so-and-so.

Senator McCARTHY. In that case, you did not get any approval of the full committee?

Senator HAYDEN. It was impossible because Congress was in recess. The full committee was in recess.

Senator McCARTHY. You didn't get it by wire or letter?

Senator HAYDEN. I made no effort to do that. I was of the opinion under those circumstances, and they were very serious circumstances, I may say, Senator, because we had three election contests coming up right at that time: Michigan, Wisconsin, and New Mexico. It was very important to have a subcommittee which could function properly.

Senator McCARTHY. I would like to direct your attention to this, Senator, so you will know why I attach so much importance to this. The only time that the record shows that I was requested to appear before the subcommittee was after the 20th of November. Mr. Monroney resigned on the 20th. That left only 2 of the original 5 members who had been confirmed by the full committee.

If it took the full committee's approval to appoint you as a member of that subcommittee, so you would have a quorum present, then you had no committee after the 20th of November. Therefore, any request—

The CHAIRMAN. Let Senator McCarthy finish his question.

Senator McCARTHY. Therefore, there would be no valid committee for that reason.

It becomes very important to determine whether or not the chairman nominates or the chairman has the right to appoint a member of the subcommittee, and I am just curious to know upon what theory of the law, what Senate rule, gives you the opinion that you had the right to appoint and confirm a Member of the Senate.

Senator HAYDEN. Well, just the plain rule of common sense. Here were three election contests. That is, the sworn statements submitted to the Subcommittee on Privileges and Elections demanding investigation in the State of Wisconsin, in the State of Michigan and in the State of New Mexico. There had to be a subcommittee here to perform the necessary functions and it had to have the majority of a committee of five. The only way I could arrive at the situation, inasmuch as I couldn't persuade Senator Green to go on the committee, and I couldn't appoint the Senator from Kentucky because he was chair-

man, Democratic Campaign Committee, and had participated in it—that left nobody to be appointed but myself and therefore I appointed myself and was immediately, proceeded immediately, to take care of the three election contests.

Senator McCARTHY. I would like to ask the Chair to do this, Mr. Chairman.

Mr. Chairman, I would like to make a formal request of the Chair. I think it is very important in view of the fact that there was only request of me to appear and that was when I was up in the north woods; that is after Monroney had resigned after 3 of the original 5 members had resigned.

I wonder if the Chair would inquire of the Parliamentarian whether or not there was actually a committee after the 20th of November; whether the chairman of the full committee had the right to appoint himself as a member, or whether that would take committee action. I have been under the impression the Chair only has the right to nominate and that regardless of necessity it takes full committee action to appoint a member, and I wonder if the Chair would undertake to get that information from the Parliamentarian, if he would.

The CHAIRMAN. The committee, of course, wants that information.

Now, these questions have been raised and the full Senate will want it. So we will either get Mr. Watkins, if he is well enough to come, or his assistant, or we can direct a letter to Mr. Watkins if that would be satisfactory, and have him give his opinion, whichever way would be the most satisfactory.

But this committee certainly wants all of the information on it because it is a very interesting and a very important point.

Would the committee members like to ask questions? We will start over here on the left.

Senator Johnson.

Senator JOHNSON. No.

The CHAIRMAN. Senator Stennis, Senator Carlson.

Senator CARLSON. No questions.

Senator STENNIS. Mr. Chairman, I think while Senator Hayden is here, he might testify on his actions here in the premises that he has testified about, that they have been customary all the time that he was chairman of the Rules Committee. Is that correct?

Senator HAYDEN. That is the way I always handled it.

Senator STENNIS. You have been chairman since when, Senator Hayden?

Senator HAYDEN. Since the beginning of the 81st Congress; up until this Congress.

Senator STENNIS. There has never been any rule of that committee that was contrary to what you did in the premises of this case?

Senator HAYDEN. No, I made innumerable appointments of subcommittees and advised the committee of the action taken so that it would be recorded in the minutes of the committee, always consulting a ranking minority member as to who, if it was a subcommittee, who it would be.

Senator STENNIS. You had been a member of this committee prior to the time you became chairman, of course?

Senator HAYDEN. Yes, sir.

Senator STENNIS. So far as you recall, the practice before you became chairman had been the same as after you became chairman?

Senator HAYDEN. And I believe it is the same today as far as I know. I know of no change.

Senator STENNIS. But I say, before you became chairman, the practice was the same as it continued during your chairmanship?

Senator HAYDEN. Yes.

Senator STENNIS. That's all.

The CHAIRMAN. Senator Johnson.

Senator JOHNSON. No questions.

The CHAIRMAN. Senator Case, do you have any further questions?

Senator CASE. Yes, Mr. Chairman.

Senator Hayden, you testified that you were chairman of the Committee on Rules and Administration starting with the 81st Congress. How long did you continue as chairman?

Senator HAYDEN. Until, I think, about the 16th of January 1953.

Senator CASE. Sixteenth of January, 1953?

Senator HAYDEN. Yes.

Senator CASE. What Congress was in session at that time?

Senator HAYDEN. The present Congress.

Senator CASE. The 83d Congress?

Senator HAYDEN. Yes.

Senator CASE. Did the Committee on Rules and Administration function after, with you as chairman, function after January 3, 1953, the date when the new Members of the Senate were sworn in?

Senator HAYDEN. I know that we filed this committee report and I don't remember what other functions were performed, but there is no question that I was acting chairman and would act until my successor was duly elected and qualified, which I think, was on the 16th of January when we had the first organization of the committee and Senator Jenner became chairman.

Senator CASE. You have made reference to certain election contests growing out of the 1952 election. Were those election contests referred to your committee following January 3, 1953?

Senator HAYDEN. No. The contest in Wisconsin we looked into and decided that there was not anything to it and that was the end of that.

In the case of the State of Michigan contest, we examined a certain number of ballots sent in, and the New Mexico contest was carried on for nearly 2 years afterwards.

Senator CASE. What I am seeking to determine is whether or not the Committee on Rules and Administration continued after the new Congress came in and you referred to those election contests? I think the committee can take legislative notice, judicial notice, of the fact that as of January 3, 1953, or on that date when the new Members were sworn in, that there was some discussion between Senator Taft and the Vice President with reference to certain contests.

Further, I should like to determine, if possible, whether or not the Subcommittee on Privileges and Elections, with Senator Hennings as chairman, received or acted upon, or had referred to it these election contests, or in any other way functioned as a subcommittee, and whether or not your committee, the full Committee on Rules and Administration, functioned after January 3, 1953, and January 16, 1953, which you have given as the date when Senator Jenner took over.

Senator HAYDEN. I doubt very much if any formal action of any kind would be taken under those circumstances. It is possible that there may be some record somewhere, but we knew that in due time——

Senator CASE. Was the committee in existence after January 3, 1953?

Senator HAYDEN. Certainly. I, at least, always assumed that I was elected chairman of the committee until my successor was duly qualified and appointed, and that did not happen until the Republican committee made its report to the Senate, designating who were to be the members of the Senate Committee on Rules and Administration, and when they were elected to the Senate, after they were elected to the Senate, then they met and took over.

Senator CASE. How did Senator Hennings become chairman of the Subcommittee on Privileges and Elections?

Senator HAYDEN. By my appointment; my designating him to that effect. He was the only lawyer among the Democrats.

Senator CASE. You designated him when? Was it after Senator Gillette resigned?

Senator HAYDEN. Yes, sir.

Senator CASE. Was he the ranking majority member of the committee in point of assignment to the Subcommittee on Privileges and Elections, following the Gillette and Monroney resignations?

Senator HAYDEN. My impression is that he and Senator Monroney came in as Senators at the same time.

Senator CASE. Following Senator Monroney's resignation, was Senator Hennings then the only Democrat member, then the majority member remaining on the subcommittee?

Senator HAYDEN. That is right.

Senator CASE. So he succeeded to the chairmanship in that capacity?

Senator HAYDEN. Yes.

Senator CASE. And then you appointed yourself as a member of the subcommittee?

Senator HAYDEN. Yes, sir.

Senator CASE. The matter is extremely important in view of the representations that have already been made in this hearing with reference to the first count as it was presented.

The counsel for Senator McCarthy draws our attention to some of the wording there with the inference that that had a bearing upon some of the early limitations of the subcommittee, and the second paragraph, I think the one that relates the Morse amendment proposed to the resolution of censure, specifically directs attention to a letter dated November 21, 1953, which urged or requested Senator McCarthy to appear before that committee.

Now, as of that date, November 21, 1953, was Senator Hennings the chairman of the subcommittee?

Senator HAYDEN. He was.

Senator CASE. And he continued as chairman of that committee until what date?

Senator HAYDEN. Until the new committee took over on, I think, the 12th of January of the following year.

Senator CASE. Did I say 1952?

The CHAIRMAN. You said 1953, as I remember.

Senator CASE. November 21, 1952, should be the date of the letter to which I referred. If I said 1953, I mispoke.

Well, with reference to this date, and I think, Senator Hayden, you indicated it was January 16; you think it was January 12 or 16?

Senator HAYDEN. One day in January after the Senate had elected a new Committee on Rules and Administration.

Senator CASE. But, in any event, some days after the swearing in of the Congress and the swearing in of the new Members of the Senate?

Senator HAYDEN. Yes.

Senator CASE. Were the old Members of the Senate sworn in on January 3, 1953?

Senator HAYDEN. There was no necessity for it. Only newly elected Senators are sworn in.

Senator CASE. Were any duties assigned to you or did you perform any duties as chairman of the Rules and Administration Committee after January 3, 1953?

Senator HAYDEN. I do not recollect there was anything of any importance.

Senator CASE. Did you assign rooms?

Senator HAYDEN. No; I assigned rooms up until the end of the year and all the new Senators were in their rooms and settled down when January 3 came. I made the assignments up to that time. There were no further room assignments to be made after that date.

The CHAIRMAN. Will you yield there, Senator, for a question?

Senator CASE. Yes.

The CHAIRMAN. The committee employees, the staff, are paid on the 15th of each month; are they not?

Senator HAYDEN. Yes; the same as any other committee.

The CHAIRMAN. You would have to sign the payroll so that they could get their pay on the 15th of January.

Senator HAYDEN. Perhaps I did. I might have signed some payroll.

The CHAIRMAN. You regularly signed the payroll, did you not, each month?

Senator HAYDEN. No; I did not sign the subcommittee payroll. Senator Hennings signed it.

The CHAIRMAN. We are not particularly concerned at the moment about the subcommittee, but whether you were a chairman of the full committee at that time.

Of course, the subcommittee would take care of itself, but you were still chairman of the full committee.

As chairman of the full committee you signed the payroll regularly for the staff?

Senator HAYDEN. Yes.

The CHAIRMAN. They are paid twice a month.

Senator HAYDEN. Yes; whatever was required of me to do, I did.

The CHAIRMAN. And the new organization was made on the 16th of January?

Senator HAYDEN. That is my recollection. I am not positive about that date.

The CHAIRMAN. So, under ordinary circumstances, you would have followed your custom during the entire period under discussion, and you would have signed the payroll for the committee staff for the first half of the following January, January 1953?

Senator HAYDEN. If I were the chairman at that time, I would.

The CHAIRMAN. Of course, you do not remember at the time, but you could check back to see whether you did sign that?

Senator HAYDEN. That could be found.

The CHAIRMAN. If it is very important, we can check and find out from the Senate disbursing office whether you did, or you did not.

Senator CASE. Mr. Chairman?

The CHAIRMAN. Senator Case.

Senator CASE. I think it is exceedingly important to find out whether or not this committee existed as a legal committee following January 3, 1953, and whether or not the Senate so recognized it.

Did this committee, headed by Senator Hennings, continue the consideration of Senate Resolution 187, and Senate Resolution 304, being the resolutions directing the investigation of certain matters in the matter of Joseph R. McCarthy?

Senator HAYDEN. My recollection is that that work, the actual work of preparing that report was completed before the end of the calendar year, but that the report, the distribution of the report, took place early the next year.

Senator CASE. Do you know when the report was filed?

Senator HAYDEN. No, I do not, unless there is a date there.

Senator CASE. Did these subcommittees, and particularly this subcommittee headed by Senator Hennings, have referred to it other matters in addition to this?

Senator HAYDEN. Oh, yes, we had very important matters, and that is what I was so concerned about, getting a functioning subcommittee because here were documents coming in complaining about the fact that Senator Potter was not duly elected and Senator Ferguson was not duly elected and Senator Chavez was not duly elected and demanding an investigation.

Senator CASE. Are you saying that the matters relative to the Senator Chavez election, the Senator Ferguson election, and the Senator Potter election were referred to this subcommittee for investigation?

Senator HAYDEN. They were, and I attended hearings in each case where the committee passed upon the evidence.

Mr. WILLIAMS. Sir, we cannot hear.

The CHAIRMAN. Just a moment. Mr. Williams says he cannot hear. Bring your microphone up in front of you, Senator Hayden.

Senator HAYDEN. I said it was very important that there be three members of the subcommittee because of these sworn statements that came to the Committee on Privileges and Elections alleging wrongdoing and violation of the election laws, and demanding investigation, and so we employed investigators and sent them out to these States and had them come back and make their reports to us.

We made the findings that were necessary and did everything that was necessary to be done.

But unless you had three members, the way I reason it, which would be a majority subcommittee of five, there could be no functioning. It would be impossible and for that reason I took the place on the committee.

Senator CASE. Senator Hayden, was there any matter referred in connection with the election of Senator Langer at that time?

Senator HAYDEN. There was complaint, but there were no sworn complaints from certain citizens of his State about his conduct and

we decided that inasmuch as, finally, nobody was going to swear to his charges, that we would not pay attention to them.

Senator CASE. Do you know if any official action was taken by the committee with reference to—

Senator McCARTHY. Senator Case, I would if you would make it clear for the record that the Senate was not in session, that there could be no referral except a referral by Senator Hayden, by himself to his own subcommittee, that there could be no formal referral by the Senate. I think that is important.

Senator CASE. I will be glad to come to that.

Do you know of any official action being taken by the subcommittee on the Potter, Ferguson, Chavez, Langer matters, official action that was taken by this subcommittee that was recognized or accepted or acted upon by the Senate?

Senator HAYDEN. Well, the Senate was not called upon by any action taken by either the subcommittee or the Senate Committee on Rules and Administration, so far as the Langer or the Potter or the Ferguson charges were concerned, because we didn't find anything—

The CHAIRMAN. Just a moment, Senator. Aren't you mistaken about Senator Ferguson? He wasn't running last year.

Senator HAYDEN. Oh!

The CHAIRMAN. It was Senator Potter, of Michigan, and Blair Moody.

Senator HAYDEN. That was the case.

The CHAIRMAN. Senator, you have referred to it all the way through as Senator Ferguson.

Senator HAYDEN. I am mistaken about that.

The CHAIRMAN. Yes.

Senator CASE. I think the chairman is correct in that.

Senator HAYDEN. That is right.

Senator CASE. I have been accepting the references.

The CHAIRMAN. That is all right. Senator Johnson called it to my attention.

Senator CASE. Where you were referring to Senator Ferguson, you were referring to the senatorial election in Michigan?

Senator HAYDEN. That is right.

Senator CASE. And it should be Potter instead of Ferguson?

Senator HAYDEN. That is right. I beg your pardon. In any event, in those cases we found no occasion to do anything.

In the New Mexico case, however, that was just a continuing operation. It was clearly evident that the matter would require a great deal of study. We had reports of investigators, and it was clear the case had to go on.

Senator CASE. Were these matters referred to the Committee on Rules and Administration and by it to the Subcommittee on Privileges and Elections by you, or by action of the Senate?

Senator HAYDEN. The complaints would come to the Committee on Rules and Administration, and, as chairman I would pass them on, refer them to the Subcommittee on Privileges and Elections, the regular way it was handled.

Senator CASE. Do you recall any other matters, responsibilities, or duties that were referred to the Subcommittee on Privileges and Elec-

tions during the time that it was headed by Senator Hennings that may have continued over and beyond January 3, 1953?

Senator HAYDEN. Not at the moment; I do not.

Senator CASE. I am merely seeking, Mr. Chairman, and Senator Hayden, too, and counsel, to determine whether or not there was official recognition by the Senate of the committee.

In think, in view of the representations in the pleadings that have been made, that it is important to determine whether or not we had a valid subcommittee when it was headed by Senator Hennings and whether or not it could issue a valid request for Senator McCarthy to appear before it, and whether or not, in turn, Senator McCarthy, by any act or by expression, could be held contumacious or in contempt of the committee.

It is certainly important to determine whether or not we had a valid committee.

Senator ERVIN. Mr. Chairman.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. I just want to see if I understand the chronology of the membership of the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration.

As I understand it, this subcommittee originally consisted of five members—namely, Senator Gillette, Senator Welker, Senator Monroney, Senator Hennings, and Senator Hendrickson, with Senator Gillette as chairman?

Senator HAYDEN. That is correct.

Senator ERVIN. Then Senator Welker and Senator Gillette resigned?

Senator HAYDEN. They did.

Senator ERVIN. Leaving Senator Hennings and Senator Hendrickson on the subcommittee?

Senator HAYDEN. With Senator Monroney.

Senator ERVIN. And then, after Senator Monroney resigned, you appointed yourself as a member of the subcommittee in his stead?

Senator HAYDEN. That is right.

Senator ERVIN. Leaving the subcommittee composed of Senator Hennings as chairman and you and Senator Hendrickson as members?

Senator HAYDEN. That is correct.

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. Would the Chair indulge me for one further question?

Senator Hayden, I have in my hand a copy of the Rules and Manual of the United States Senate, a bound copy, dated 1953. I have it open to page 42, and want to ask you a question with reference to the status of rule 25 during the time which we have been discussing.

At page 42, paragraph No. 2:

Each standing committee shall continue and have the power to act until their successors are appointed.

Paragraph 3 (a) :

Except as provided in paragraph (b) of this subsection, each standing committee and each subcommittee of any such committee is authorized to fix the number of its members (but not less than one-third of its entire membership) who shall constitute a quorum thereof for the transaction of such business as may

be considered by said committee, subject to the provisions of section 133 (d) of the Legislative Reorganization Act of 1946.

Subparagraph (b) :

Each standing committee and each subcommittee of any such committee is authorized to fix a lesser number than one-third of its entire membership who shall constitute a quorum thereof for the purpose of taking sworn testimony.

Now, you have already testified you were chairman of the Committee on Rules and Administration at this period in 1952 and 1953. Was there any change in that rule during 1952 or in January 1953?

Senator HAYDEN. I do not believe there was any change in it at all.

Senator CASE. That is all.

The CHAIRMAN. Senator, I have another question: The Committee on Interior and Insular Affairs had a custom, at least under the chairmanship of Senator Hugh Butler, the late Senator Hugh Butler, of the chairman becoming ex officio a member of all committees. Did you have such a practice in your committee?

Senator HAYDEN. No, there were no such practices.

The CHAIRMAN. Are there any further questions?

Senator McCarthy.

Mr. Williams.

You may be excused, Senator.

Senator HAYDEN. Thank you.

The CHAIRMAN. This is not by way of complaint, but by way of explanation: The members of this committee have been in almost continuous session, even during the lunch hour, since 9 o'clock this morning, either in executive hearings or in public hearings. Our staff has been working day and night for weeks since they have been appointed to their positions. We have gone just about to the point where we can't take much more and keep clear heads on this matter. So, we are going now to recess until tomorrow morning at 10 o'clock.

(Whereupon, at 4:46 p. m., the hearing was recessed until 10 a. m. Saturday, September 11, 1954.)

HEARINGS ON SENATE RESOLUTION 301

SATURDAY, SEPTEMBER 11, 1954

UNITED STATES SENATE, SELECT
COMMITTEE TO STUDY CENSURE CHARGES PURSUANT
TO SENATE ORDER ON SENATE RESOLUTION 301,
Washington, D. C.

The select committee met, pursuant to recess, at 10:06 a. m., in the caucus room, 318 Senate Office Building, Senator Arthur V. Watkins (chairman) presiding.

Present: Senators Watkins (chairman), Johnson (vice chairman), Carlson, Case, Stennis, and Ervin.

Also present: Senator McCarthy; E. Wallace Chadwick, counsel to the committee; Guy G. de Furia, assistant counsel to the committee; John M. Jex, clerk of the committee; John W. Wellman, staff member; Frank Ginsburg and Ray R. McGuire, members of Senator Watkins' staff on loan to the committee; and Edward Bennett Williams, counsel to Senator McCarthy, with his associates, Agnes A. Neill and Brent Bozell.

The CHAIRMAN. I would appreciate it if the photographers would cease their activities now. We want to get along with the hearing.

The committee will now be in session. You may continue with the examination of Senator McCarthy, Mr. de Furia.

TESTIMONY OF SENATOR JOSEPH R. McCARTHY

Mr. DE FURIA. Yes, Mr. Chairman.

Senator McCarthy, you did appear before the Gillette-Hennings subcommittee, did you not, in support of your resolution against Senator Benton?

Senator McCARTHY. I did.

Mr. DE FURIA. The fact is, however, Senator, is it not, that you did not appear before that same subcommittee in connection with the charges made against you, either before or after the adoption by the Senate of Senate Resolution 300?

Senator McCARTHY. That is correct.

Mr. DE FURIA. And when you appeared before that subcommittee, as I understand it, Senator, that was without the service of any subpoena upon you by the committee.

Senator McCARTHY. No, but that was with a request that I appear.

Mr. DE FURIA. Was that in the form of a letter, sir?

Senator McCARTHY. Either a letter or a wire. I received no such request in connection with the Gillette hearings on the Benton charges, except when I was up in the north woods and did not receive it until after the empanelment for my appearance had expired.

MR. DE FURIA. May I say, Senator, that is one of the questions this committee no doubt will have to resolve, is it not, from the testimony you give?

Senator McCARTHY. Well, you will have to depend upon the testimony.

MR. DE FURIA. Yes.

Senator McCARTHY. If there is any testimony contrary to this, I will be interested in hearing it.

MR. DE FURIA. Yes. Now, you did say, did you not, Senator, in your letter to Senator Gillette of October 4, 1951, which is exhibit No. 5, that you did not intend to read, much less answer, the charges in the Benton resolution?

Senator McCARTHY. That sounds like the exact quote.

MR. WILLIAMS. Just a moment. In the interest of accuracy, there were no charges in the Benton resolution.

I think you have reference to the list of cases that were submitted by Senator Benton in mimeographed form on September 28, 1951.

The resolution is of record here and contains no charges. I think that question was framed on an inaccurate hypothesis.

MR. DE FURIA. Mr. Williams, may I call to your attention that I am referring to Senator McCarthy's own letter in which he states that he does not intend to read, much less answer the charges.

I would like to have a minute, Mr. Chairman, to look at Resolution 187.

The CHAIRMAN. You may take the time.

MR. WILLIAMS. Your question was in the form of stating that there were charges in the Benton resolution, which is not the fact. There were no charges in the Benton resolution.

Senator McCARTHY. I was referring to the charges made to the press and in public. There were no charges in the resolution.

MR. DE FURIA. In that connection, may I say, Mr. Chairman, that Senate Resolution 187 of the 82d Congress, 1st session, August 6, 1951, speaks for itself.

MR. WILLIAMS. I say "amen" to that, Mr. de Furia.

MR. DE FURIA. I am glad we are in agreement once.

Now, Senator McCarthy, in your letter to Senator Gillette, dated December 6, 1951, which is exhibit No. 6, you did say, did you not:

When your Elections Subcommittee, without Senate authorization, spends tens of thousands of taxpayers' dollars for the sole purpose of digging up campaign material against McCarthy, then the committee is guilty of stealing just as clearly as though the members engaged in picking the pockets of the taxpayers and turning the loot over to the Democrat National Committee.

Senator McCARTHY. That is a correct quote.

MR. DE FURIA. In the same letter, Senator, did you not state:

While the actions of Benton and some of the committee members—

Senator McCARTHY. Just a moment.

The CHAIRMAN. Just a little slower, Mr. de Furia.

Senator McCARTHY. I have it now.

MR. DE FURIA. I will repeat.

Did you not state in that same letter:

While the actions of Benton and some of the committee members do not surprise me, I cannot understand your being willing to label Guy Gillette as a man who will head a committee which is stealing from the pockets of the

American taxpayer tens of thousands of dollars and then using this money to protect the Democrat Party from the political effect of the exposure of Communists in Government.

Senator McCARTHY. That is a correct quote.

Mr. DE FURIA. Did you have any evidence, Senator McCarthy, to support the statements of fact that you made in this letter?

Senator McCARTHY. Yes.

Mr. DE FURIA. Did you ever produce that evidence?

Senator McCARTHY. It was produced in letters to the committee. I pointed out to them exactly what I had in mind, that they were going far beyond the Benton resolution, that they were going back to 1935, that they were making photostats, and I think that photostats cost, I think in the neighborhood of \$1,000 and the correspondence they had with the bank, having nothing to do with wrongdoing, requests for extension of time and payment of interests.

The bank has answered, granting extension of time, evidence of the payment.

They did me one favor. They proved that no one ever lost one penny by loaning money to McCarthy. They did not prove——

Mr. DE FURIA. Mr. Chairman, I ask that the witness confine his answer to the question.

Senator McCARTHY. Let me finish my answer.

The CHAIRMAN. In the first place, the question, I do not think, called for all of that.

Mr. WILLIAMS. I think, Mr. Chairman, the question asked for what evidence he had of bad faith, to sum up the context of these two paragraphs on the part of the committee. That was the question and he is undertaking to answer that, and I think he is entitled to answer that.

The CHAIRMAN. Then confine it strictly to evidence. That, of course, would require the Senator to only produce such things as he had evidence of.

Mr. DE FURIA. Mr. Chairman, that was not my question. My question was whether he ever produced that evidence.

Senator McCARTHY. Mr. Chairman, may I suggest that I am trying to answer counsel's question and if my answer is not responsive, why, the Chair will order it stricken, but I do think I should be allowed to answer the questions without interruption. My answers have not been long. They have been confined mainly to yes and no answers.

When I feel that we must go beyond a yes or no answer, I do it in an attempt to answer the questions as I understand the usual court procedure which you are following, Mr. Chairman. I should be allowed to answer.

If the answer is not responsive, you would order it stricken.

The CHAIRMAN. Of course, we are in a little different situation. Counsel for the committee is not in a position to object at all. The whole burden has been placed on the chairman to see that we follow the rules. That is what puts me in the embarrassing position of taking one side or the other, if I think one side or the other are wrong, and counsel has been instructed that he cannot object.

Senator McCARTHY. He has been objecting.

The CHAIRMAN. Well, he should not.

Senator McCARTHY. Interrupting and objecting.

The CHAIRMAN. Well, I call attention to the fact that he is trying to ask—let us get the question and see what it was. It should be responsive.

Would you please read the question?

(The question was read by the reporter as follows: "Did you ever produce that evidence?")

The CHAIRMAN. That is the question: "Did you ever produce the evidence?", and the answer could be yes or no.

Senator McCARTHY. The answer is the evidence has been produced.

Mr. DE FURIA. Where was it produced, Senator?

Senator McCARTHY. Produced by the committee at their own invitation.

Mr. DE FURIA. You did have available to you, did you not, Senator McCarthy, an exact financial record of every penny spent by that subcommittee?

Senator McCARTHY. No.

Mr. DE FURIA. You could have gotten it, I mean, Senator; isn't that correct?

Senator McCARTHY. I doubt that very much.

Mr. DE FURIA. You did obtain from the subcommittee, however, a record of their employees and salaries, did you not, sir?

Senator McCARTHY. A record of some of the employees. I believe the letter I got from Gillette indicated that there were 2 or 3 other employees not named.

Mr. DE FURIA. Yes, sir, but they did give you full information, did they not, in reply to your inquiry about the employees?

Senator McCARTHY. Well, we would have to refer to the letter. I believe the letter gives a list of employees and says there are some others. I am depending upon my memory on this.

The letter is on page 64.

I think that is a correct list of the employees, most likely. However, the full salary is not given. The base salary is given, which is rather meaningless to the average person.

Mr. DE FURIA. Do you have any evidence that that committee was spending tens of thousands of dollars illegally, Senator?

Senator McCARTHY. They were spending a vast amount of money illegally. I don't know the exact figure. I know they were spending a great amount of money illegally.

Mr. DE FURIA. As I recall your testimony, Senator, yesterday you said you voted in favor of Senate Resolution 300 testing the jurisdiction of that subcommittee. Are you correct in that, sir?

Senator McCARTHY. Testing the jurisdiction only to investigate the Benton resolution.

Mr. DE FURIA. Yes, sir, but are you sure, sir, that you voted in favor of that resolution?

Senator McCARTHY. Yes. I am reasonably certain of that.

Mr. DE FURIA. I call to your attention that the record shows that there were:

Ayes—none;

Nays—sixty;

Thirty-six not voting,

and that you are registered as not voting.

Mr. WILLIAMS. I think the record is very clear on that, Mr. de Furia, that he left before the vote was taken.

Senator McCARTHY. Yes. The record will show that I said I would vote for the resolution. I urged the Senators to vote for it. I said that I had to leave on a plane at 6 o'clock, or thereabouts.

You will find that in the record. I would consider that the same as voting for it. In other words, I announced my position.

Mr. WILLIAMS. That whole colloquy is in the record to which I am sure you are now referring, because I have a clear recollection of it.

Senator McCARTHY. I think some of the Senators will recall that.

Mr. DE FURIA. Now, passing, Senator, to the letter of November 21, 1952, which is exhibit 41, the subcommittee did "respectfully urge you to arrange to come before us on or before November 25." Is that correct, sir?

Senator McCARTHY. That is correct.

Mr. DE FURIA. And, as I understand your testimony, you were away on a hunting trip and you did not receive that letter until November 28; is that right, sir?

Senator McCARTHY. November 28, and I so informed the chairman of the committee.

Mr. DE FURIA. Now, is that the same day, sir, that you first saw the telegram of November 21 from Senator Hennings to you?

Senator McCARTHY. I couldn't tell you from memory, but my letter so indicates, and I am sure the letter is correct.

Mr. DE FURIA. Yes, sir. Now, this telegram which has been offered in evidence as committee exhibit No. 1 shows that it was sent in Washington on November 21 to you, sir, at Appleton, Wis. Is that your home address, Senator?

Senator McCARTHY. That is my home address.

Mr. DE FURIA. And I take it you are rather well known in Appleton, Wis.?

Senator McCARTHY. I would think so.

Mr. DE FURIA. Is your office there, too, Senator?

Senator McCARTHY. I have no office there.

Mr. DE FURIA. Just your home?

Senator McCARTHY. Yes. I live with my brother-in-law and sister when I am in Appleton.

Mr. DE FURIA. Yes, sir. Was this telegram delivered there? That is what I am trying to find out.

Senator McCARTHY. I understand it was delivered to the order of the office of Attorney Van Susteren; that he put it in the mail and mailed it to Washington.

Mr. DE FURIA. Yes, sir. When you saw it, it was down here in Washington; is that right?

Senator McCARTHY. That is right.

Mr. DE FURIA. Now, I call to your attention the black stamp at the top of the telegram, which I believe, sir, you have seen. I asked you this morning, or I told you, I think—

Senator McCARTHY. Yes.

Mr. DE FURIA. That I wanted to ask you a question about that.

Senator McCARTHY. Yes.

Mr. DE FURIA. It is "Recd December 1, 1952." Can you tell us who put that date on the telegram?

Senator McCARTHY. I assume that it was the stamp put on in Mr. Van Susteren's office.

Mr. DE FURIA. That is what I don't understand, Senator. You saw the telegram in Washington on November 28, and, yet, you say, as I understand it, that this was put on in Wisconsin by Van Susteren.

Senator McCARTHY. I assume so. I don't know. I was up in the north woods at the time, as I recall. I was not in the position to receive any telegrams, any mail.

When I came back to Washington, I received the wire which requested an appearance, but placed the time limit of November 25, I believe, which was 3 days before I returned.

I informed the chairman of the committee of this. He made no further request that I appear before the committee; and that, may I emphasize, is the only request that I ever received to appear before the committee. Prior to that I had received offers to appear, if I wanted to.

So, it was impossible to comply with that request.

Mr. DE FURIA. Senator, I hesitate very much to leave the record in this situation. You said you had this telegram at least on November 28.

Now, I am asking you about a stamp of 3 days after that, and, as I understand it, you are now saying that the stamp of December 1 must have been put on in Wisconsin, which would be prior to November 28.

Senator McCARTHY. No. Let's stick to our first question, Mr. de Furia. You talked about a stamp of November 21 or 22.

Mr. DE FURIA. No, sir. I am sorry, sir, if I have confused you. I am talking about "Rec'd December 1——"

Mr. WILLIAMS. Are you talking about——

Mr. DE FURIA. "1952."

Mr. WILLIAMS. Excuse me.

Are you talking now about not the red stamp, but the black stamp at the top?

Mr. DE FURIA. The black stamp at the top.

Senator McCARTHY. Could I see the wire?

Mr. DE FURIA. Yes, sir.

Mr. WILLIAMS. What is that exhibit, Mr. de Furia, to which you made reference a moment ago, wherein this wire was acknowledged?

Mr. DE FURIA. I don't believe I referred to it, but I can find it in a minute.

Exhibit 44.

I just received your wire of November 22.

That is by Senator McCarthy, under date of November 28, and I presume here at Washington.

Senator McCARTHY. Well, I can tell you apparently I had received it or I wouldn't write a letter acknowledging it.

Mr. DE FURIA. Well, I am trying to find out just when you did receive it, Senator.

Senator McCARTHY. Well, sir, obviously I couldn't tell you today what date I received that wire. I referred to it in the letter dated November 28. So I assume it had been received.

Mr. DE FURIA. Can you tell us what day you got back to Washington from your hunting trip?

Senator McCARTHY. The letter says I got back on the 27th, I believe.

Mr. WILLIAMS. 27th.

Senator McCARTHY. And I assume that is correct.

Mr. WILLIAMS. The letter, Mr. de Furia, which is exhibit 44, recites that, "I have just received your wire of December 22." Here we have the original record.

Mr. DE FURIA. Yes. We put that in the record, as I recall. That was mailed from Washington, D. C.

Senator McCARTHY. And could I read the entire wire, so the committee will know what was written? I mean the entire letter. The letter is dated November 28, 1952:

DEAR SENATOR HENNINGS: I just received your wire of November 22 in which you state that you would like to have me appear before your committee between November 22 and 25. As you were informed by me prior to the time you sent this wire, I was not expected to return to Washington until Thursday, November 27, on which date I did return.

Sincerely yours,

JOE McCARTHY.

So that he knew that I was not in the city.

Mr. DE FURIA. Is it your testimony, Senator, that possibly you would have been willing to appear before that subcommittee to make some reply or answer to the charges against you, pending before that subcommittee?

Senator McCARTHY. I told Senator Gillette that, if I were ordered to appear, I would appear.

Mr. DE FURIA. Did you not say, though, several times, Senator, and actually on the floor of the Senate, that a Senator was not subject to subpoena?

Senator McCARTHY. A Senator is not subject to subpoena during the term of the Senate. He is subject to subpoena after the Senate has adjourned. Whether he is subject to subpoena when the Senate is in recess, I frankly don't know.

Mr. DE FURIA. Was the Senate in session, or in recess, at the period around November 25, November 28, and December 1?

Senator McCARTHY. I do not know whether it was in recess or whether it had adjourned.

Mr. WILLIAMS. It had adjourned. I think we could take judicial notice that it had adjourned on November—

The CHAIRMAN. Whatever the record shows. My memory is that we had adjourned.

Mr. WILLIAMS. Yes, sir.

Senator McCARTHY. The record will show that. I do not remember.

Mr. DE FURIA. In the letter you just read, Senator, I note you did not say, "I would be glad to appear at some later time."

Senator McCARTHY. Did you note that?

Mr. DE FURIA. Yes.

Senator McCARTHY. Good.

Mr. DE FURIA. Do you have any comment to make about that, sir?

Senator McCARTHY. No.

Mr. DE FURIA. Did you have any intention of appearing before this subcommittee?

Senator McCARTHY. If I were ordered to appear, I would have appeared. I made that very clear to the chairman of the committee—not only if I were subpoenaed. I made it clear to him that I would not appear merely if they accorded me the right to appear; that I had no desire to appear before that committee. I made it clear to him that I thought they were not conducting an honest investigation,

and that I would not request any right to appear, but that I would honor a subpoena or an order.

Mr. DE FURIA. I should like to know if there is any distinction between an order and a subpoena, as you use the word "order." Did you mean you would not appear unless you were subpoenaed?

Senator McCARTHY. No. An order would be a subpoena.

Mr. DE FURIA. Now, nowhere in this long correspondence—

The CHAIRMAN. Just a minute. As a matter of fact, I would like to call to the Senator's attention, and get his point of view on it, his remembrance—you remember he testified to a conversation he had with Senator Gillette on the floor of the Senate.

Senator McCARTHY. That is right.

The CHAIRMAN. In which, as I recall, you told him that you would not appear unless you were subpoenaed?

Senator McCARTHY. Either subpoenaed or ordered, whichever word I used. I used them interchangeably.

The CHAIRMAN. Did you also tell him at that same time that you would not appear, unless you were given permission to cross-examine?

Senator McCARTHY. No.

The CHAIRMAN. Are you sure about that, Senator?

Senator McCARTHY. I am sure about that. I told him I would not accept one, when they said, "You may appear, if you wish"—that I did not wish to appear, unless I had the right to cross-examine. In other words, I would not appear unless I had the right to cross-examine, unless they ordered me to appear; in which case I recognized their right to do that. I told him I would do that during the session, even though they had no right to subpoena me. I told him I would not question an order or the subpoena. I told that to the press, also.

The CHAIRMAN. I was calling that to your attention, because I had a conversation by telephone, about your discussion of that point with Senator Gillette. I am not going to repeat what he said, but I wanted to be sure you understood fully the situation, and I wanted to get your point of view and your version of what happened. So I asked you that question, if you did not say to Senator Gillette at that time that you would not appear, unless you were permitted to cross-examine?

Senator McCARTHY. The answer (1) is no, and (2) Gillette never requested that I appear. You will find that in the record.

The CHAIRMAN. I am not stating that he did. All I am doing is to ask the question.

Mr. WILLIAMS. In the light of the Chair's reference to his conversation with Senator Gillette, I might say, in passing, that at the time this request was made of Senator McCarthy to appear—which never was communicated to him—the committee was no longer taking evidence which he could cross-examine. They were simply asking for a hearing. Of course, he could not cross-examine that.

The CHAIRMAN. That is a matter of argument, when he comes to that.

Senator McCARTHY. It is not a matter of argument; it is a matter of fact.

The CHAIRMAN. Well, you have already testified to your version of the facts, and I am not disputing it, except that I merely wanted, for the purpose of the record, to get that clear.

I did not relate, or attempt to relate, what occurred in Senator Gillette's subcommittee. I merely asked you that question.

You may proceed.

Mr. DE FURIA. Senator, you did not write to Senator Hennings, telling him that you were sorry that you were away, or anything to that effect, but that you would be glad to appear on another date.

Mr. WILLIAMS. I think you asked that question, and he answered it. I ask that it not be repeated over and over again.

THE CHAIRMAN. Well, it is repetition. We cannot repeat all that was asked before. I think it was answered.

Mr. DE FURIA. All right, sir.

Now, I understood you wrote a letter, did you not, to Senator Hennings, dated December 1, 1952, stating, in part, as follows:

I would therefore ordinarily not dignify your committee by answering your letter of November 21. However, I decided to give you—

Senator McCARTHY. What exhibit is that?

Mr. DE FURIA. 45.

Senator McCARTHY. On what page?

Mr. DE FURIA. 102.

Senator McCARTHY. That is December 1?

Mr. DE FURIA. Yes, sir.

Senator McCARTHY. Ready, Mr. de Furia.

Mr. DE FURIA. I will start again with the quotation:

I would therefore ordinarily not dignify your committee by answering your letter of November 21. However, I decided to give you no excuse for claiming—

Senator McCARTHY. I wonder if you would not begin at the beginning of the letter, and read the entire letter that you are referring to?

Mr. DE FURIA. I should prefer to do it in my own way, sir.

THE CHAIRMAN. This is cross-examination. I doubt that the witness can dictate to the cross-examiner what he is to include in his questions. If the questions are involved, I will rule upon it. Proceed.

Mr. DE FURIA. I continue:

I would therefore ordinarily not dignify your committee by answering your letter of November 21. However, I decided to give you no excuse for claiming in your report that I refused to give you any facts. For that reason, you are being informed that the answer to the six insulting questions in your letter of November 21 is "no."

Does that indicate, Senator, any intention or desire on your part to appear, by order or otherwise?

Senator McCARTHY. Mr. de Furia, I had no desire to appear. The chairman was informed I would appear if I were subpoenaed or ordered to do so. I had no desire to appear before that committee, and I had no intention of appearing, unless I was ordered, subpoenaed to do so.

Mr. DE FURIA. You knew, of course, did you not, Senator, that the charges pending before that committee, and which were set forth in a letter from the chairman to you, reflected rather seriously, sir, upon your character and activities?

Mr. WILLIAMS. I want to interrupt there, if I may, Mr. Chairman, because I think Mr. de Furia has made a very unfortunate selection of words—"charges." There were no charges on which those ques-

tions were predicated. There was no evidence in the record supporting those questions.

The committee, as the record shows, had been conducting an investigation, and the investigation contained only hearsay reports; and those so-called, as you say, charges, were backed by nothing; so obviously they could not have been charges; they were questions.

The CHAIRMAN. I will say counsel might reframe his question, and instead of referring to them as "charges" refer to them as "matters."

Mr. DE FURIA. I think that point is well taken, sir.

The letter from Chairman Hennings to Senator McCarthy, dated November 21, 1952, exhibit No. 41, states:

The subcommittee desires to make inquiry with respect to the following matters—

Then are listed six matters. I should have used the word "matters" perhaps, rather than "charges."

Now, my point, Senator, is this: You knew that those matters were of sufficient moment ordinarily to justify your making some reply; is that not correct?

Senator McCARTHY. They were six insulting questions asked by the committee—by a Senator, not by a legal committee. I answered his questions. I told him the answer was "no." They had previously been informed that, if I were subpoenaed, I would appear.

Mr. DE FURIA. Well, is it your position, Senator, that when matters of that serious nature are pending against a Member of the United States Senate, instead of appearing and making an answer, he can call them "insulting" and need not appear?

Senator McCARTHY. They are no more matters than the 46 statements made by Senator Flanders.

Mr. DE FURIA. Now, I call to your attention the fact that in yesterday's testimony, or perhaps the day before, you stated that the fact that the telegram of November 14, 1952, which was never sent, was somehow included in the H-H-H report, was a completely dishonest fact. Now, did you mean that, Senator?

Senator McCARTHY. Yes, I meant that.

The CHAIRMAN. I would like to inquire, because this is quite important, and the committee would like to know, I am sure, whether you were charging the individual members of that committee with dishonesty in putting that in the report because, after all is said and done, they were responsible for the report.

Senator McCARTHY. Somebody was dishonest in putting into the report the wire that was never sent, and indicating it had been sent when, on the face of it, it appeared it had not been sent. That was Senator, dishonest. That was an attempt to create the wrong impression. This was a strong request that I appear before the committee. No such request was ever sent. Whoever put this in the record knew that because it is written on the face of it that it had not been sent.

The CHAIRMAN. I was asking you about the individual Senators. Do you, in that statement that it was wholly dishonest, are you accusing those individual Senators—just a moment—who were responsible for the report, signed their report? Are you charging them with dishonesty?

Senator McCARTHY. I don't know which Senators knew that this was included and that it had not been sent. Any Senator who knew

that this wire had not been sent and signed the report was not honest. Which ones knew, I don't know. Somebody knew of it, because this wire on its face showed it had not been sent.

The CHAIRMAN. It showed in pencil notation. Whether or not that was binding is another question.

Mr. WILLIAMS. Mr. Chairman.

The CHAIRMAN. Just a moment, let me finish this matter.

What I am trying to find out, Senator, is your attitude toward the members of that committee.

Senator McCARTHY. Senator——

The CHAIRMAN. Just a moment, let me finish. There has been a number of exhibits introduced and received in which you admitted that you wrote, it seemed to me, that in the very beginning before the committee had hardly gotten under way, you were expressing your opinion of this committee.

Now, I am not going to say what you said, but the letters show for themselves.

We are very much interested in your attitude toward the membership of this committee. We don't think it is quite fair to pass it off to the staff, or anything of that sort, for what was in the report, because, after all, the individual Senators who make up the committee and who sign a report are responsible for what is there.

Senator McCARTHY. First, I will answer the first part.

The CHAIRMAN. That is why I asked you the other day if you did not think it possible an honest mistake could have been made in including that telegram which had the pencil notation on it that it was not sent.

Senator McCARTHY. First, let me answer the first part of your question, Senator.

You said before the investigation got under way, I was——

The CHAIRMAN. Fairly well under way.

Senator McCARTHY. You are incorrect in that.

The CHAIRMAN. I may be, but I am just quoting from memory.

Senator McCARTHY. Let me give you that correct. I know all about this matter; I have been living with it. It had been under way. They had been going far beyond the resolution, investigating things they have no right to investigate; going back beyond the time that I was even old enough to run for Senator, investigating the income-tax returns of my father, who died before I was elected.

So I knew those facts. So that investigation was under way, No. 1.

No. 2, I say that somebody took that wire which on its face showed it had not been sent and made that a part of the record.

Who did that, I don't know. Whoever did it was dishonest.

The CHAIRMAN. You know who is responsible for the report; do you not?

I am getting right to the heart of the thing. The Senators who signed the report ordinarily are responsible for the report, what it contains.

Senator McCARTHY. Some of them did not read the report and I am not accusing any Senator who did not know of this, who did not know this had not been sent, of being dishonest in this respect.

Someone, Mr. Chairman, included a wire, a wire very important to this case, knowing that it had not been sent. Whoever did that was dishonest.

Which of the Senators signed the report knew of this, if any, I don't know. I have no way of knowing.

In fact—strike that.

The CHAIRMAN. How much do you want stricken? All of your answer? You said "strike that."

Mr. WILLIAMS. He obviously meant only when he made a false start.

The CHAIRMAN. If that is what he means—

Senator McCARTHY. I want nothing stricken.

For example, in this wire it says:

Your continued refusal to cooperate with the committee in its efforts to carry out the instructions of the United States Senate would appear to prevent—it says "prevent," but it must mean "present"—a conscious disregard by you for the Senate's authority and a desire to prevent a disclosure of the facts.

Mr. WILLIAMS. I think Mr. de Furia pointed out yesterday the word "prevent" should be "reflect" as it is contained in the original of the wire that was not sent.

Senator McCARTHY. Again, I repeat, Mr. Chairman, that I don't know who was responsible for this dishonest act. Somebody was.

The CHAIRMAN. Senator, in calling it to your attention, I am not necessarily disputing what you said. I am only calling attention to the possibility that there may have been an honest mistake and it seems that you won't admit there is any possibility of there being an honest mistake in that respect.

Senator McCARTHY. It is a very remote possibility when you have a wire that was never sent, on the face of it shows that it was not sent, and it is put in as an exhibit, and the exhibit deletes the words "not sent." That, to me, appears to be nothing less than dishonest.

Mr. WILLIAMS. Mr. Chairman, if I may say so, the significance of this wire is that the content is so much stronger than anything that has theretofore been sent or the wire which, in fact, was sent, that it is very interesting to observe.

The CHAIRMAN. It is very interesting and that is the reason I am asking some questions about it.

Senator Case, I think, desired to be recognized.

Senator CASE. Mr. Chairman, there is a little evidence on this in the report which is already in the record to which attention has not been directed.

On page 55 of the printed copy of the Hennings-Hayden-Hendrickson report, there appears an index of the exhibits in the appendix, and No. 42, it will be noted, the description of the exhibit appearing as exhibit 42, is a telegram dated November 21, 1952, from Senator Hennings to Senator McCarthy, and it appears at page 99 of the report. That is the telegram to which reference has been made. That is the telegram appearing on 99, listed as exhibit 42; but as is obvious from the testimony already given, the telegram dated November 21, 1952, is not the telegram appearing as exhibit No. 42.

It occurs to me that whoever prepared the appendix, index, which appears at page 55, intended that the telegram dated November 21, 1952, should appear; but that somehow in the assembly of the exhibits or the material, the copy supplied to the printer was the undated telegram but which, as I previously pointed out, appears to have been prepared on November 14 but apparently was never sent.

Senator McCARTHY. You are not asking a question?

Senator CASE. No, I am not asking a question; I am just pointing it out. I think in an inquiry of this sort, the purpose is to determine the facts in the case and the index clearly indicates the intent of whoever prepared the index of the appendix was to have the telegram of November 21, but apparently the copy supplied to the printer was of the other telegram.

The CHAIRMAN. The reason for the questions I have been asking I think should be apparent. However, I should like to mention also in addition to that fact I think the heart of the matter the committee is investigating at this particular moment is the attitude of the Senator from Wisconsin with respect to that committee. In fact, that is the heart of the charges that he had a contumacious attitude in showing contempt for it. That is the reason I wanted to show up as much as possible, and you have expressed a very strong feeling yesterday when you said that this was dishonest. You may be right. I am not saying whether you are right or wrong in your conclusion, but at any rate I wanted to be sure exactly how you felt about it because that is the heart of this charge.

Senator McCARTHY. Mr. Chairman, I think the charge is that I refused to appear before the committee when requested to do so. Regardless of how I felt about their—there is no secret about how I felt about them.

The point is that I was never requested to appear except at a time when I was not available and when they knew I was not available.

When I returned, they received answers to their requests.

It is not a question of how I felt about them. That is no secret.

The CHAIRMAN. Well, your entire conduct with respect to the committee, I think, is subject to proper investigation.

My attention has been called to the amendment by Mr. Fulbright, which comes under incident 1:

Although repeatedly invited to testify by a committee of this Senate headed by the Senator from Iowa, the junior Senator from Wisconsin denounced the committee and contemptuously refused to comply with its requests.

Senator McCARTHY. It is a false statement. I was not repeatedly invited to appear.

The CHAIRMAN. I am merely calling attention to the charge that we have here, the language of it. I think it bears out what I was saying a few moments ago.

Senator McCARTHY. I think it should be clear, Mr. Chairman, by now, that this is a false statement; that I was not repeatedly requested; that I was only requested on the 21st by wire, which I did not receive until the 28th, beyond the time limit of the 25th, so it was impossible to comply with the request.

So there were no requests. The record will show that.

The CHAIRMAN. I have finished, as far as I am concerned.

You may proceed.

Mr. DE FURIA. Senator, have you referred to the Senator from Vermont as senile on more than one occasion?

Senator McCARTHY. I don't recall on how many occasions.

Mr. DE FURIA. Was it more than once, Senator?

Senator McCARTHY. It might well be.

Mr. DE FURIA. To the press and to the public?

Senator McCARTHY. I am inclined to think so.

Mr. DE FURIA. Is there any doubt about it, Senator?

Senator McCARTHY. There is no doubt that I thought he was senile and referred to him as senile.

Mr. DE FURIA. When you returned to Washington, I think it was August 31, sir, just before these hearings started, did you not say to the newspapermen who met you at the airport, "There is no question about Senator Flanders being senile. If he isn't, let him prove it."

Senator McCARTHY. I don't recall having made that statement.

Mr. DE FURIA. You do not recall whether you made it?

Senator McCARTHY. I don't recall that statement.

Mr. DE FURIA. Do you think you might have made it, Senator?

Senator McCARTHY. I say, I don't recall having made it.

Mr. DE FURIA. Does it reflect your opinion in the matter so that you might have made it?

Senator McCARTHY. When I said I thought he was senile, I thought he was senile.

Mr. DE FURIA. Do you think you were justified in referring to a Member of the United States Senate, one of your colleagues, in terms such as that?

Senator McCARTHY. Because you are a Member of the United States Senate, you are not free from criticism. There is nothing, there is no halo that surrounds the throne. I may say that his language concerning me was much stronger than that, but if you think a man is senile, he is engaging in improper activities, you have a perfect right to say that you think he is senile. That is part of our freedom of speech.

Mr. DE FURIA. Senator, you said the Gillette-Hennings Committee was dishonest for looking into your conduct and you say Senator Hennings is senile for criticizing you.

The CHAIRMAN. He didn't mean Senator Hennings.

Senator McCARTHY. I didn't say Senator Hennings was senile.

Mr. DE FURIA. Senator Flanders. The part of my question is: Do you think it is proper for you, sir, to refer to your colleagues in the United States Senate in those terms?

Senator McCARTHY. Not if you do it on the floor of the Senate. Rules provide you can be set down off the floor of the Senate. There is no special privilege which a Member of the Senate has. After the obscenities he had voiced about me, the ridiculous statements he had made, I was convinced he was senile. I had a perfect right to say that I thought he was senile, regardless whether he was a Senator or not. In other words, being a Senator puts him in no special category when he is off the Senate floor. On the Senate floor there are certain rules.

Mr. DE FURIA. Now, may we pass, Senator, to another part of this situation, categories 2 and 3?

Did I understand you correctly in your testimony yesterday that your copy of the two-and-one-quarter page paper, in your opinion, did not contain any security information?

Senator McCARTHY. That is right.

Mr. DE FURIA. Now, on page 785 of yesterday's testimony, Senator, you asked the chairman to delete certain names before the paper was received in evidence: did you not?

Senator McCARTHY. That is correct.

Mr. DE FURIA. Why did you make that request of the Chair if the paper did not contain security information?

Senator McCARTHY. Because that is a document belonging to my committee. We have a rule that we do not make public any names unless and until the individual named can appear before the committee and answer the charges against him.

We follow that practice in all cases possible where a man is named as a Communist. He is in the room. He is called forward and allowed to affirm or deny.

Mr. DE FURIA. Then, as I understand it, you do not think that the names of suspected Communists or subversives is security information?

Senator McCARTHY. The names are not security information. The information about them would be security.

Mr. DE FURIA. Well, then, why did you want those names deleted?

Senator McCARTHY. I told you.

Mr. WILLIAMS. He just answered the question, Mr. Chairman.

Senator McCARTHY. Let me answer the question again so that there will be no doubt in his mind.

I told you, Mr. de Furia. Let me try to give it to you again.

The rule of our committee is that we do not make names public unless the individual is available to answer the charges against him and, being the chairman of that committee, I requested the Chair of this committee to follow the rule of our committee and delete the names, because making public those names would be a violation of the rules of the committee of which I am chairman.

I cannot put that in clearer language.

Mr. DE FURIA. Did you make that same request at the time of the Army-McCarthy hearings?

Senator McCARTHY. I believe I suggested the names be deleted.

Mr. DE FURIA. You believe it. Do you know whether you did or not?

Senator McCARTHY. I do not know whether I did or not.

Mr. DE FURIA. Now, yesterday you said you were going to—

Senator McCARTHY. In fact, I am not even sure it was offered in evidence.

It was given to Mr. Stevens with the request that he tell us whether or not it was in his files. It was handed to Mr. Jenkins.

The record would show, but I doubt whether it was offered in evidence.

Mr. DE FURIA. You tried to get it read, did you not, Senator?

Senator McCARTHY. I wanted the Senators to look at it.

Mr. DE FURIA. I am asking you, sir, you tried to get it read in public and over the television cameras?

Senator McCARTHY. I could have read it over the television cameras if I wanted to do so.

Mr. DE FURIA. And you would have read the names that you asked the chairman to delete?

Senator McCARTHY. I could have read it over television. I did not.

The CHAIRMAN. The question is, Did you offer to read it?

Senator McCARTHY. No, I did not.

The CHAIRMAN. Just a moment, Mr. Williams.

Mr. WILLIAMS. I will have to interpose when he asks a question that is predicated on any facts and asks it in a way which assumes that it is true when it is untrue. I will continue to do that so long as the Chair permits me.

Senator McCARTHY. The question is, Did I offer to read it over television, and the answer is "No." I was asked to read it over television and I did not. The answer is "No."

The CHAIRMAN. Was that in open session?

Senator McCARTHY. I would not be in open session unless it were over television.

Mr. DE FURIA. Did you ask the right to cross-examine Secretary Stevens about that letter?

Senator McCARTHY. I did.

Mr. DE FURIA. Is there any question whatever, Senator, that it was your purpose at that time to disclose what was in that letter?

Senator McCARTHY. I did not intend to disclose the names, other than the name of Aaron Copland whose name had been discussed.

Mr. DE FURIA. Did you make that intention apparent to any members of the committee or counsel at the time?

Senator McCARTHY. I do not think I got to that point.

Mr. DE FURIA. Now those names, including the name of Aaron Copland, had the top-secret classification of the FBI at that time; is that right?

Senator McCARTHY. Would you repeat that question?

Mr. DE FURIA. The names in that letter, including the name of Aaron Copland, which was disclosed were under the highest classification of the FBI at that time?

Senator McCARTHY. The FBI had never classified the two and one-quarter page document.

Mr. DE FURIA. In spite of what Mr. Hoover said and what Attorney General Brownell said.

Senator McCARTHY. Mr. Hoover never said he classified the two and one-quarter page document, if I recall.

Mr. DE FURIA. Mr. Hoover did say that that was classified during the Army-McCarthy hearings and could not be revealed by anyone.

Senator McCARTHY. That is incorrect.

Mr. DE FURIA. May I pass to another matter, Senator?

You said yesterday that you would make an inquiry of whether you sent telegrams to the six other members of the Permanent Subcommittee on Investigations to inquire whether you could release the official transcript of General Zwicker's testimony. Have you checked upon that, Senator?

Senator McCARTHY. I have.

Mr. DE FURIA. Can you enlighten the committee?

Senator McCARTHY. Yes, in fact we have at least one wire from one of the Senators in answer to the wire which we sent.

Mr. DE FURIA. What was the wire you sent, sir?

Senator McCARTHY. I cannot quote it verbatim. It was a wire in which we pointed out, I believe to the best of my knowledge—I have been handed what purports to be a copy of the wire which is headed:

LLD003
SYNA 475 PD
NEW YORK, N. Y.
21, 1057 PMA

This is to Senator Jackson, Senate Office Building, Washington, D. C.

In view of the fact there has been raised a serious question as to what testimony the General Zwicker testimony—

It should be:

The testimony of the General Zwicker case shows plus the fact a number of Senators, the Secretary of the Army, and the general himself have indicated a desire to have this testimony made public. I am authorizing the official recorder to make available to the public at 12 noon, February 22, testimony of General Zwicker taken at New York City February 18, unless objected to by subcommittee members. If you have any objection and encounter difficulty in reaching me, please notify the recorder, Harold Alderson, 306 Ninth Street, NW., Washington, D. C. Copies have been ordered delivered to desks of all subcommittee members earliest possible moment this morning.

JOE McCARTHY,
Senate Permanent Subcommittee of Investigations.

Mr. DE FURIA. You sent that then, sir, on February 21; is that correct?

Senator McCARTHY. That is correct.

Mr. DE FURIA. That was 3 days after General Zwicker's hearing?

Senator McCARTHY. That is correct.

Mr. DE FURIA. Did I understand you to say yesterday that when you revealed to the press part of what happened at the Zwicker—

The CHAIRMAN. Just a moment. I cannot keep up with the examination. There is a matter called to my attention here and I have to make rulings as we go along, and I cannot read a memorandum which was put up to me and listen to you at the same time.

The CHAIRMAN. You may proceed.

Mr. DE FURIA. Senator, let me start that question again, please, sir.

Senator McCARTHY. Certainly.

Mr. DE FURIA. As I understand you to say yesterday, that immediately after General Zwicker's executive session, and you revealed to the press parts of what had transpired, that you did that on the authority of yourself, Mr. Jones, and Mr. Rainville.

Senator McCARTHY. No; I told you that that was the practice of the subcommittee that we had long followed; known to the members of the subcommittee.

Mr. DE FURIA. Well, on whose authority did you tell the press what had happened at that executive hearing?

Senator McCARTHY. Because that was our practice.

Mr. DE FURIA. On whose authority, Senator?

Senator McCARTHY. I say, because that was the practice of the subcommittee. So we can assume it was on the authority of the subcommittee.

Mr. DE FURIA. Sir, I don't want to call you evasive, but I would like to have an answer to my question: On whose authority did you do that?

Senator McCARTHY. I told you that I did it because it was our practice that we had followed at all times. The subcommittee knew of this practice. Different members were present when it was followed, and there was no disagreement about the practice.

Mr. DE FURIA. Mr. Chairman, I submit to you, sir, that I would like to have an answer to my question.

Mr. WILLIAMS. I think, Mr. Chairman——

The CHAIRMAN. Just a moment.

Mr. WILLIAMS. This has been asked 3 times, and he has gotten the same answer 3 times, which states the Senator's position.

I am sorry to interrupt, but when he repeats it——

The CHAIRMAN. I am going to rule he can't ask it any more. I think, whether the answer is satisfactory or not, he has at least answered it, and that will stand as Senator McCarthy's answer.

Mr. DE FURIA. Yes, sir.

Now, were there seven Senators, Senator, on that subcommittee at that time?

Senator McCARTHY. At the time of the Zwicker testimony?

Mr. DE FURIA. Yes, sir.

Senator McCARTHY. There were.

Mr. DE FURIA. Now, in the Army-McCarthy hearings, Senator, I call to your attention the hearing of May 27, 1954, at page 3915, volume 22, which was read into the record of these proceedings.

Senator McCARTHY. I would want a copy of that before I would be cross-examined on it.

Mr. WILLIAMS. Do you have that, sir?

Mr. DE FURIA. I am going to call to your attention a quotation from your remarks, sir.

Now, if you would like to look at that, I have no objection.

Senator McCARTHY. Do you have the transcript?

Mr. WILLIAMS. Are you going into the colloquy on solicitation, Mr. de Furia?

Mr. DE FURIA. Yes.

The CHAIRMAN. Before we leave this other matter, I think you were reading—I was engaged for a moment elsewhere—a copy of a telegram.

Mr. WILLIAMS. If you will wait just a minute, I can get that.

The CHAIRMAN. I would like to have that. The committee would like to see it.

Mr. WILLIAMS. I have it, Mr. de Furia.

Thank you.

Senator McCARTHY. Yes, Mr. de Furia.

Mr. DE FURIA. I think the chairman is occupied, sir.

Mr. WILLIAMS. I noticed that was postmarked midnight instead of February 21, I think the Senator testified September 21.

Senator McCARTHY. It would be on the 20th.

Mr. DE FURIA. That is the telegram that the Senator sent——

Mr. WILLIAMS. Yes.

Mr. DE FURIA. To the other members of the subcommittee.

Mr. WILLIAMS. I think it was sent at midnight.

The CHAIRMAN. Does it show on the face of it? I didn't notice.

Mr. WILLIAMS. Yes.

The CHAIRMAN. You may proceed.

Mr. DE FURIA. Senator McCarthy, calling to your attention that particular page of the testimony in the Army-McCarthy hearing, I have it you said:

and I will continue to receive information such as I received the other day.

Do you recall, Senator, whether you were then referring to your copy of the 2¼-page paper?

Senator McCARTHY. I received the 2¼ page in 1953. That was not received the other day.

Mr. DE FURIA. Yes, sir. That is the point of my question. There is an ambiguity there that I am asking you to clarify for me, if you can.

Senator McCARTHY. I don't know what information we were referring to. It was something received the other day. Just what that was, I don't know.

Mr. DE FURIA. All right, sir.

On page 3918, which immediately follows that, the same date, May 27, 1954, volume 22, I think, Senator, you refer several times to the duty of the 2 million Federal employees to give us "any information" about graft, corruption, communism and treason; is that correct, sir?

Senator McCARTHY. That is correct.

Mr. DE FURIA. I call to your attention that in the first excerpt on 3915 you used the word "information" and again on 3918 you used the word "information"; is that correct?

Senator McCARTHY. If you have the transcript that shows I used the word "information," I am sure you wouldn't misquote it.

Mr. DE FURIA. Now, I call to your attention page 7014, volume 35 of the hearing of June 16, 1954.

Do you have that, Mr. Williams?

Senator McCARTHY. Yes, we have that.

Mr. DE FURIA. In that you stated the following:

While I am chairman of the committee I will receive all the information I can about wrongdoing in the executive department. I will give that information to the American people.

Is that correct, sir?

Senator McCARTHY. I don't have that quote before me; but if you say that is a correct quote from the transcript, I will take your word for it.

Mr. DE FURIA. Now, I call to your attention at least in those quotations, Senator, you have always used the word "information," and I am asking whether you make any differentiation between information and knowledge.

Mr. WILLIAMS. I think, in order to clear that question up, it is necessary for us to know what distinction you make between those two terms.

Mr. DE FURIA. Well, by information, I would include rumor, malicious utterance, suspicion, scandal, spite, credible information, bona fide information, dishonest information—a multitude of things—and I am trying to find out what Senator McCarthy meant when he used the word "information."

Mr. WILLIAMS. What do you mean by "knowledge"?

I don't understand the distinction.

The CHAIRMAN. I assume it is all right if counsel wants to answer, but it is hardly necessary to——

Mr. WILLIAMS. I don't know how a witness can answer the question—

The CHAIRMAN. Well, this witness is an intelligent gentleman. I think he can answer it.

Senator McCARTHY. I am referring here, obviously, to valid information.

Mr. DE FURIA. Did you ever say that in your public utterances, asking these 2 million employees to give you—

Senator McCARTHY. Oh, that is very clear from the statements that we are referring to valid information—

Mr. DE FURIA. That—

Senator McCARTHY. Of dishonesty and wrongdoing.

Mr. DE FURIA. Excuse me.

Does not that constitute each 1 of the 2 million employees the judge of what is valid information and the judge of what is not valid information?

Senator McCARTHY. No. The law places upon them the obligation, the right and the obligation, to give information of any felony they have. If they don't give information about treason, they are guilty of treason likewise. If they don't give information of felony, they are guilty of felony.

The law gives them a right to give information, not only to chairmen of committees, but also to Members of the Congress.

I may say the law, so far as I know, doesn't even restrict it to wrongdoing. I restricted this more than the law of 1912, reenacted in 1948, did. I restricted it to wrongdoing and, as chairman of the committee, I had to get that information.

Mr. DE FURIA. Can you, Senator, or your counsel, refer this committee to any act or any statute which provides that any employee can give you information, sir?

Senator McCARTHY. Yes; certainly.

Mr. WILLIAMS. Title V, section 652-d, United States Code.

The CHAIRMAN. Let the witness answer, Mr. Williams.

Mr. WILLIAMS. He asked me.

Mr. DE FURIA. I asked Senator McCarthy whether he or you, Mr. Williams—

The CHAIRMAN. Either one can answer. I am mistaken. I thought it was confined to the witness.

Mr. DE FURIA. What is that citation, sir?

Mr. WILLIAMS. One of the citations is title V, section 652 of the United States Code.

There is another—

Mr. DE FURIA. Just a minute, sir. Let me get this down—V, U. S. Code, section 652.

Senator McCARTHY. D.

Mr. WILLIAMS. D.

Mr. DE FURIA. Is that the Civil Service Code, Mr. Williams?

Mr. WILLIAMS. It is the section of the United States Code which deals with executive departments.

Mr. DE FURIA. And may I ask, Senator McCarthy, whether there is any other reference to statute, which you think—

Senator McCARTHY. Yes, there is.

Mr. DE FURIA. Entitles Government employees to give you information—

Mr. WILLIAMS. Yes, sir.

Mr. DE FURIA. As distinguished from knowledge?

Senator McCARTHY. Yes; there is another section. The Espionage Act, section 798, disclosure of classified information—and this refers specifically to the disclosure of classified information:

Nothing in this section shall prohibit the furnishing upon lawful demand of information to any regularly constituted committee of the Senate or House of Representatives of the United States of American or joint committee thereof.
Enacted October 31, 1951.

Mr. DE FURIA. Yes, sir.

Now, you did say several times, did you not, Senator, that the information you received would be disclosed to the American people?

Senator McCARTHY. Information of wrongdoing?

Mr. DE FURIA. Yes, sir.

Senator McCARTHY. I assume I did. I don't recall the exact statement.

In open hearings, that is.

Mr. DE FURIA. When did you first learn, Senator, that Walter Winchell had a copy of the two-and-a-quarter page paper?

Senator McCARTHY. Oh, some newsman in the audience asked me about it. I don't recall the date.

Mr. WILLIAMS. I am sorry to interrupt, but I don't think it has ever been established by anyone that Walter Winchell had a copy of that two-and-a-quarter page paper. I don't think even Mr. Winchell said that finally when he walked out of here.

Senator McCARTHY. Yes. May I say—

The CHAIRMAN. Well, I don't know that the question is entirely proper. As counsel knows, there is a rather wide latitude in cross-examination. They assume hypothetical positions, statements.

Senator McCARTHY. I may say that I don't know that Winchell ever had a duplicate of the document which I showed Secretary Stevens and Mr. Jenkins. He apparently thought he had a copy of that. Whether he did or not, I don't know.

Mr. DE FURIA. Well, when did you first know that he said he had a duplicate of it, Senator? I think he said that he did in his newspaper column.

Senator McCARTHY. At some time in this committee room one of the newsmen asked me whether or not I knew anything about Winchell having received a copy of that document.

Mr. DE FURIA. Yes, sir. From whom did you receive your 2¼-page paper, Senator?

Senator McCARTHY. I would not give you that information.

Mr. WILLIAMS. There has already been a ruling on that, Mr. Chairman, by the previous committee to which I can refer this.

The CHAIRMAN. Well, we can take judicial notice of what they ruled, but we are not bound always by what they ruled.

Senator McCARTHY. I would not disclose the name of any informant.

Mr. DE FURIA. I am pressing my question, sir.

Unless you direct me not to persist, Mr. Chairman—

Senator McCARTHY. You may press it.

The CHAIRMAN. I think this whole problem is one probably that will have to finally be decided by the Senate. I doubt that there is any good that can come out of trying to press it here. We will not order the witness, if that is what you mean by pressing the question, to answer.

Mr. DE FURIA. Yes, sir.

The CHAIRMAN. That is the ruling. The committee will not require him to answer.

Mr. DE FURIA. Senator, did you have a conversation with a person who gave you the 2¼-page paper?

Senator McCARTHY. I did.

Mr. DE FURIA. Did you have a conversation with him before he left the paper in your possession?

Senator McCARTHY. Well, it was all part of the same transaction. Certainly I talked to him before he handed me the document. He didn't just come in and hand over a document without discussing it. In fact, he talked to me in some detail, as I recall it. It is hard to tell you what part of the conversation was before he handed me the document, what part after. I could relate the conversation if you want me to.

Mr. DE FURIA. What I am trying to find out, Senator, is whether you talked to him about that 2¼-page paper on one occasion, and whether he delivered it to you on another occasion or whether it all happened on the same occasion.

Senator McCARTHY. It was all on the same occasion.

Mr. DE FURIA. How long had you known that person?

Mr. WILLIAMS. Just a minute.

There is a ruling by the Chair now. Mr. de Furia is transgressing that ruling because these questions are designed to elicit the identity of the person, and I think that is an improper question, and I will advise the Senator not to answer that.

Senator McCARTHY. I didn't intend to answer it.

Mr. DE FURIA. Well, my purpose—

Senator McCARTHY. Mr. de Furia, I will give you no information which might enable you to identify the informant. I will give you any information you want about the conversation, what was said, but I will give you no information which might enable you or anyone else to identify the informant.

May I say this has been my practice ever since I started this job of trying to expose communism and treason in Government.

Mr. WILLIAMS. Mr. Chairman—

The CHAIRMAN. I am in doubt—somewhat in doubt—about whether that is a proper question or not; but, as I recall, the Senator has identified, without giving the name, a group or class which the person—

Mr. WILLIAMS. This question—

The CHAIRMAN. Is working with who gave him this document.

Am I right in that?

Mr. WILLIAMS. This question, Mr. Chairman, goes beyond anything that has heretofore been asked and would serve the purpose of narrowing down the field of potential persons who may have given it to him, and I think it is improper.

This position, incidently, Mr. Chairman, is not simply being taken because the Senate heretofore has sustained it, but it has been sustained

by the Supreme Court on numerous occasions, and I shall be very happy to submit a brief on that subject to this committee, if it is necessary. I hadn't anticipated it would be necessary.

The CHAIRMAN. I say I am not certain, of course, what the Senate will consider—

Mr. WILLIAMS. Yes.

The CHAIRMAN. What questions may possibly arise before the Senate—

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. When it reconvenes to consider the report of this committee.

Mr. WILLIAMS. Yes, sir.

Mr. DE FURIA. May we have the question read, Mr. Chairman, because I do not think, under any possibility, it could disclose any identification of the informant.

The CHAIRMAN. We will read it back.

Mr. WILLIAMS. I remember the question. It is, How long have you known the person who gave you the document?

Isn't that it, Mr. de Furia?

Mr. DE FURIA. Exactly.

Mr. WILLIAMS. I advise Senator McCarthy not to answer that question under the Chair's previous ruling.

The CHAIRMAN. That is a rather close question. We will sustain the objection to the question.

Mr. DE FURIA. Had you ever received any other classified material from this person, Senator?

Mr. WILLIAMS. I advised Senator McCarthy not to answer that question, because this is clearly designed, Mr. Chairman, to transgress your ruling on the subject.

Mr. DE FURIA. Mr. Chairman—

Mr. WILLIAMS. I think—

Mr. DE FURIA. I will be glad to explain the purpose I have in mind, sir.

Mr. WILLIAMS. I will not object to any questions that Mr. de Furia asks about the conversation that took place at the time that this document was given. I don't think that transgresses the Chair's ruling at all, but where he asks questions which have the effect of identifying more closely the informant, that is not in keeping with the ruling of the Chair and I must advise the witness to not answer those questions.

The CHAIRMAN. That is still more doubtful than the other one, but I will sustain the objection.

Mr. WILLIAMS. Thank you, sir.

Mr. DE FURIA. Senator, when you presented your 2¼-page paper in the Army-McCarthy hearings, did you think it was a bona fide paper?

Senator MCCARTHY. Yes.

Mr. DE FURIA. By that, do you mean, sir, that you actually thought it was a copy of a letter, an original letter, similar, sir?

Senator MCCARTHY. I thought it was a copy of a document in the Army files. On the face of the letter, it shows that certain information had been deleted.

MR. DE FURIA. Well, I am confused in the words "letter" and "document," sir.

As I recall it, and I have part of it before me, you referred to it several times as a letter.

Senator McCARTHY. That is right.

MR. DE FURIA. And then you later referred to it as a document.

Now, was it a copy of a letter and did you believe it was a copy of a letter when you presented it?

Senator McCARTHY. It appeared to be a copy of a letter and I believed it was.

All the information in that, incidentally, has been verified by J. Edgar Hoover.

The CHAIRMAN. Just a moment.

MR. DE FURIA. Just answer the question.

The CHAIRMAN. Just a moment.

That is not responsive, Senator.

MR. DE FURIA. Did you know of the existence of a 15-page—

The CHAIRMAN. And that remark may go out, the one you made that it has been verified.

MR. DE FURIA. Did you know of the existence of the 15-page memorandum when you presented your 2¼-page paper?

Senator McCARTHY. Not at that time, no.

MR. DE FURIA. You did not?

Do you know who inserted the word "Sir" at the beginning, and the words "Sincerely yours, J. Edgar Hoover," at the end?

Senator McCARTHY. I couldn't state positively. I could give you my thought on the matter.

MR. DE FURIA. I am asking for knowledge in the sense of evidence. Do you know of your own knowledge, sir, who did that?

Senator McCARTHY. Not of my own knowledge.

MR. DE FURIA. Do you know who made the evaluations "derogatory" and "no derogatory" in your 2¼-page paper?

Senator McCARTHY. I assume it was an Army security officer.

MR. DE FURIA. Do you know that of your own knowledge?

Senator McCARTHY. No, I do not know that of my own knowledge.

MR. DE FURIA. How many times since January 1953 have you received classified material or information?

MR. WILLIAMS. I don't think that is germane here, Mr. Chairman.

The CHAIRMAN. Well, one of the very charges is that he has refused—

MR. WILLIAMS. The very charge is this particular document.

The CHAIRMAN. Well, he is not talking about that.

MR. DE FURIA. Beyond this document now, Mr. Williams.

The CHAIRMAN. Of course, I would think the Senator would want to have an answer to that—

MR. WILLIAMS. Yes.

The CHAIRMAN. Because the charge is that he has been receiving—

MR. WILLIAMS. Yes.

The CHAIRMAN. Classified information. He ought to be permitted to explain that in his own behalf.

MR. WILLIAMS. I was about to ask, before we got into this area, if the Chair was thinking of taking a recess this morning.

MR. DE FURIA. I will second that motion, Mr. Chairman.

The CHAIRMAN. We will take a 10-minute recess.

Mr. WILLIAMS. Thank you, sir.

(Whereupon, at 11:26 a. m., an 18-minute recess was taken.)

The CHAIRMAN. The committee will resume session.

You may go forward with your examination, Mr. de Furia.

Mr. DE FURIA. Mr. Chairman, this morning in my examination I referred to the name Aaron Coleman. I would like to spell the last name. C-o-l-e-m-a-n.

The CHAIRMAN. What was the question?

Mr. DE FURIA. It was not a question. There is some misapprehension on how that is spelled and I want to make it clear that I said, I think I said, Aaron Coleman. C-o-l-e-m-a-n.

Senator McCARTHY, how many copies of your 2¼-page paper are in existence?

The CHAIRMAN. That is, if he knows.

Mr. DE FURIA. If you know, sir.

Senator McCARTHY. As far as I know, I do not have any copy now. I think the committee has got the only copy that we have.

Mr. DE FURIA. How many copies, Senator, were made by you or under your instructions from the time you received your copy?

Senator McCARTHY. I think there was only one. The Justice Department asked for a copy and we prepared a copy for them.

Mr. DE FURIA. Do you know whether Mr. Cohn made any copies or had any made?

Senator McCARTHY. I am reasonably certain he did not.

Mr. DE FURIA. Did he see it, sir?

Senator McCARTHY. He saw it, yes.

Mr. DE FURIA. Did Mr. Surine have any copies made, to your knowledge?

Senator McCARTHY. No, in fact I do not think Don saw it, to my knowledge.

Mr. DE FURIA. Mr. Juliana, did he see it?

Senator McCARTHY. Not to my knowledge. He may have, but not to my knowledge.

Mr. DE FURIA. Mr. Anastos, did he see it, sir?

Senator McCARTHY. I am reasonably certain that Mr. Anastos did not.

Mr. DE FURIA. Mr. LaVenja? Do you know whether he saw it?

Senator McCARTHY. I do not know. I do not think he saw it.

Mr. DE FURIA. I mean, to your knowledge, Senator.

Senator McCARTHY. No, to the best of my knowledge.

Mr. DE FURIA. To the best of your knowledge, none of these men made copies?

Senator McCARTHY. To my knowledge, none of them made copies.

Mr. DE FURIA. Where is Mr. Anastos, and I hope I have the pronunciation of his name correct. Where is he today?

Senator McCARTHY. I do not know. I could check by calling my chief of staff. He assigns the men to the various jobs.

Mr. DE FURIA. He is one of your staff; is he not?

Senator McCARTHY. He is.

Mr. DE FURIA. Did you report receipt of the two and one-quarter page paper, Senator, to the Committee on Government Operations?

Senator McCARTHY. Did I report it?

Mr. DE FURIA. Yes.

Senator McCARTHY. No, there was no formal report.

Mr. DE FURIA. Or to the Subcommittee on Investigations?

Senator McCARTHY. No. I may have discussed it with some of the members.

Mr. DE FURIA. Did either the Committee on Government Operations or the Permanent Subcommittee on Investigations authorize you to receive that two and one-quarter page report?

Senator McCARTHY. No.

Mr. DE FURIA. Or to retain it?

Senator McCARTHY. You mean was there a formal authorization?

Mr. DE FURIA. Or to produce it at the Army-McCarthy hearings?

Senator McCARTHY. There was no formal authorization, no.

Mr. DE FURIA. Do you indicate by your answer that there may have been some informal authority given to you by either the committee or subcommittee?

Senator McCARTHY. Well, the subcommittee considered it and I handed it to Mr. Stevens.

Mr. DE FURIA. The point of my question is, Before you handed it to Mr. Stevens, did either the committee or the subcommittee in any way authorize you to do that?

Senator McCARTHY. No, I did not take that matter up with the committee.

Mr. DE FURIA. Did any of the members of the Committee on Government Operations or the subcommittee know that you had that two-and-one-quarter-page paper?

Senator McCARTHY. I do not know. It was available to them.

Mr. DE FURIA. Was it in your exclusive possession, Senator, from the time it was given to you until the time you produced it at the Army-McCarthy hearings?

Senator McCARTHY. I think that Mr. Cohn saw it. Mr. Carr did. Whether Mr. Kennedy, the minority counsel, saw it, I do not know.

Mr. DE FURIA. Did you show it to any member of your committee?

Senator McCARTHY. Personally, no.

Mr. DE FURIA. Did you tell any member of your committee that you had it?

Senator McCARTHY. Mr. de Furia, I do not know whether I discussed this particular document. I mentioned to the committee that we had evidence of subversion, communism, infiltration in the secret radar laboratories. Whether this particular document was mentioned or not, I could not tell you.

Mr. DE FURIA. After you received it, Senator, did you offer to return it to General Bolling?

Senator McCARTHY. No.

Mr. DE FURIA. Did you offer to return it to the Army?

Senator McCARTHY. No, except when I handed it to Mr. Stevens.

Mr. DE FURIA. Or to J. Edgar Hoover?

Senator McCARTHY. No.

Mr. DE FURIA. Or to any judge?

Senator McCARTHY. No.

Mr. DE FURIA. Or to any of the civil or military authorities?

Senator McCARTHY. Well, of course, I am a civil authority.

Mr. DE FURIA. Other than yourself, did you offer to return it or give it to any civil or military authority?

Senator McCARTHY. No, as chairman of the investigating committee, I had this information. I retained it.

Mr. DE FURIA. I do not remember whether you answered this question or not, but I asked you this: Since January 3, 1953, have you received other classified material, not including this two-and-one-quarter-page paper?

Senator McCARTHY. You say other classified material?

Mr. DE FURIA. Yes.

Senator McCARTHY. First, let us make it clear that as far as I know this document is not classified.

If you will say, did I receive any classified material, I will answer that question.

Mr. DE FURIA. Classified material, classified under the signed order of the President or of the Secretary of the Army or the FBI and other executive authorities who have the right to make classification; have you received any such material since January 1953?

Senator McCARTHY. To the best of my knowledge, no, except through official requests to various departments from whom we received classified material, on official request.

Mr. DE FURIA. When you say "no," do you mean you have not received classified material which is properly classified, in your opinion, or do you mean that you have not received classified material classified by executive authority?

Senator McCARTHY. I do not think that I received anything that was stamped as classified, except through official requests.

Mr. DE FURIA. When you invited the Government employees and other informants to bring classified material to you, did you know that you were asking them to violate their oaths of office?

Mr. WILLIAMS. Wait a minute. I am sorry, Mr. de Furia.

Senator McCARTHY. He has misstated it.

The CHAIRMAN. Just a moment. Which one of you wants to speak?

Mr. WILLIAMS. I was simply going to point out for the record that Mr. de Furia has misstated the solicitation or request. The request, solicitation, as it has been shown from the documents already introduced, was for evidence of wrongdoing, treason, communism, corruption, and graft.

Mr. DE FURIA. Mr. Chairman, I pointed out that Senator McCarthy always used the word information. I take it there is a difference between evidence which would be acceptable in a court and information?

Senator McCARTHY. If you will rephrase your question, Mr. de Furia—

The CHAIRMAN. It seems to me it is proper cross-examination. The witness can answer whether it is right or not.

Mr. WILLIAMS. He started out when you asked for this classified information. There is nothing in the documents he has introduced to show that Senator McCarthy made any specific request for classified information. He asked for information on wrongdoing in the executive department which he delineated as graft, corruption, communism, or treason.

Mr. DE FURIA. Regardless of any Executive order, regardless of any order of the President, regardless of any stamp that may have been put on by some little bureaucrat. That is what the Senator said; is that not right?

Mr. WILLIAMS. Are you asking this question now?

Mr. DE FURIA. Yes.

Mr. WILLIAMS. Is that what he said?

Mr. DE FURIA. I am asking whether he did not say that regardless of the order of the President——

Mr. WILLIAMS. Are you undertaking to quote him, Mr. de Furia?

Mr. DE FURIA. May I proceed, Mr. Chairman?

The CHAIRMAN. I think that is proper.

Mr. WILLIAMS. I am going to interrupt him so long as you let me, Mr. Chairman, when he misstates the facts. I said yesterday I wanted to help him to be fair and I conceive that to be my function. He put in the word quoted and I asked him where he was quoting from, and I do not see why there should be any reluctance on his part.

Mr. DE FURIA. There is no reluctance. I will be glad to give it to you verbatim, sir. Just give me a moment.

I call to your attention, Senator, the record in the Army-McCarthy hearings, volume 23, May 28, 1954, page 4260, already in the record of this hearing, wherein you stated——

Mr. WILLIAMS. What was the page?

Mr. DE FURIA. 4260.

Mr. WILLIAMS. Is that in this mimeographed sheet?

Mr. DE FURIA. Yes.

Mr. WILLIAMS. O. K.

Mr. DE FURIA. Wherein you stated:

I may say, Mr. Chairman, that I have instructed a vast number of those employees that they were duty-bound to give me information, even if some little bureaurat has stamped it "secret" to protect himself.

Is that correct?

Senator McCARTHY. I think that is a correct quote.

Mr. WILLIAMS. In the context, of course.

Mr. DE FURIA. Just a minute, please. May I proceed?

The CHAIRMAN. Let him proceed with the cross-examination. If there is any objection to the question, the Chair will rule on it.

Mr. WILLIAMS. I object. I think the context should be pointed out.

The CHAIRMAN. You may do that on redirect, sir.

Mr. WILLIAMS. I do not like to leave these misleading bases for inferences that might be drawn by his omitting parts of the colloquy.

The CHAIRMAN. Bring that up in cross-examination, if anything is called for that does not give a complete picture. Then, on the redirect examination, counsel, or the person being interrogated in this case, Senator McCarthy, can have an opportunity on redirect to bring out those things.

Mr. WILLIAMS. I merely wanted to be sure that Mr. de Furia wanted the complete picture.

The CHAIRMAN. We want the complete picture, but he cannot get everything in his questions; I realize that. That is one of the difficulties in conducting an examination. Particularly is it difficult under the directions of this committee to Mr. de Furia.

Mr. de Furia and Mr. Chadwick have both been practicing the law, where they have to take necessary adversary positions all the time. This committee has instructed them, as nearly as humanly possible, to step from that role, and to assume a different role of trying to get all the facts, regardless of whether the facts may help any particu-

lar view or not, and whether favorable or unfavorable to Senator McCarthy; to develop all the facts. And I think we can understand it would be a handicap to limit him, because, by force of habit, for many, many years, they have taken the adversary point of view; and so sometimes they may get over the line a little bit; and I will try to call it to their attention.

Mr. CHADWICK. Mr. Chairman, will you permit me a word?

The CHAIRMAN. All right.

Mr. CHADWICK. Just to say this: At a previous stage of the hearings, Mr. Williams challenged us as to the fairness of our selection of sections from the diverse and confused testimony, for the purpose of introducing matters material to this case. Thereafter, he checked us with the greatest care on the question, and, if I recall rightly, he found that we had excluded no context which was of pertinency or relevancy, although he did introduce matters in which he quoted other testimony, as we had conceded that it would be his right to do.

Mr. WILLIAMS. I will subscribe to that, Mr. Chairman. I cannot hear all the statement, but I think I subscribe to it.

The CHAIRMAN. I think, at the moment, it is unnecessary for us to have this colloquy, but we let Mr. Chadwick make his statement.

Senator McCARTHY. May I have the answer to Mr. de Furia's question?

The CHAIRMAN. Read the question, also, so we will know what he was answering.

(The record was read by the reporter, as follows:)

I call to your attention, Senator, the record in the Army-McCarthy hearings, volume 23, May 28, 1954, page 4260, already in the record of this hearing, wherein you stated——

Mr. WILLIAMS. What was the page?

Mr. DE FURIA. 4260.

Mr. WILLIAMS. Is that in this mimeographed sheet?

Mr. DE FURIA. Yes.

Mr. WILLIAMS. O. K.

Mr. DE FURIA. Wherein you stated:

"I may say, Mr. Chairman, that I have instructed a vast number of those employees that they were duty-bound to give me information, even if some little bureaucrat has stamped it 'secret' to protect himself."

Is that correct?

Senator McCARTHY. I think that is a correct quote.

Senator McCARTHY. May I add to that answer, Mr. Chairman?

The CHAIRMAN. You may, as long as it is responsive.

Senator McCARTHY. It is quoted, sir, to show something is omitted, and I am sure Mr. de Furia knows that, taken in the context of the examination, I was referring to graft and corruption, communism, and treason. I was not asking for any other information.

Mr. DE FURIA. I think that is correct, sir. But you were asking for information on those subjects, regardless of any stamping of classification under the law; is that right, sir?

Senator McCARTHY. As long as it was not actually classified material; and, Mr. de Furia——

Mr. DE FURIA. I do not understand, sir.

Senator McCARTHY. Mr. de Furia, may I suggest that, at this point, so we will know what we are referring to, when we talk about "classified"—I am not going to tell you how to conduct your cross-examination——

Mr. DE FURIA. Any help will be appreciated, Senator; don't worry. Senator McCARTHY. That we put into the record the definition of "Top Secret," "Secret," "G-," "Confidential"—I have that here—so we will know what we are referring to, and none of these definitions includes information about graft, corruption, communism, or treason.

Mr. DE FURIA. But the point of my question, Senator, is this:

You say you "instructed." Now, that is more than an invitation; isn't it?

Senator McCARTHY. Well, I should have said "invited", because I could not instruct. I had no authority to instruct.

Mr. DE FURIA. But the record does show that you said "instructed", does it not? And that was over the air, and was heard over a nationwide television system; isn't that right, sir?

Senator McCARTHY. The record shows "instructed", but I say it should be "invited", because, obviously, I could not instruct. I had no power over the Federal employees.

Mr. DE FURIA. Did you not say, sir, that it was their duty, however, to bring you this information?

Senator McCARTHY. I said that; and I think so, now. I think that it is their absolute duty to bring to the Congress any information concerning graft, corruption, communism, and treason.

If they do not do that, in my opinion, they are violating the law; they should not be working for the Federal Government.

It is inconceivable to anyone that Mr. de Furia would say that a man guilty of wrongdoing can stamp the evidence of his wrongdoing "Secret", or "Top Secret", when it does not conform to the definitions which I just handed to the Chair.

We just cannot have that in this country.

Mr. DE FURIA. You did not talk about his wrongdoing, did you, Senator? You talked about nobody's wrongdoing?

Senator McCARTHY. We are interested in anybody's wrongdoing, Mr. Chairman. That is my duty. I was unanimously selected as head of a committee to act as the watchdog of the executive branch, to ferret out wrongdoing. The only way I can get that is by inviting those who know about it to bring me the information.

Mr. DE FURIA. Did the Senate of the United States instruct you that you had the power to obtain information of wrongdoing, regardless of orders of the President or executive officials, and regardless of proper markings of classified material?

Senator McCARTHY. Not regardless of proper marking. We are not looking for atomic energy secrets, we are not looking for the type of material defined in the instructions of "secret," "top secret," and "confidential," which is in the hands of the Chair. We are looking for evidences of wrongdoing.

Under the Reorganization Act, the committee of which I am chairman is charged with the responsibility of ferreting out that wrongdoing. As chairman of the subcommittee I have that duty, and I cannot perform that duty unless those who know of the wrongdoing bring the information to me.

Mr. DE FURIA. As I understand it, you feel that, in the proper performance of your duties, you should have given this public instruction or invitation, soliciting the information, even though the persons who would supply you with this information would be violating the orders of the President of the United States and their own superiors?

Senator McCARTHY. I do not think the President of the United States has ever issued an order saying he wanted to cover up wrongdoing.

Mr. DE FURIA. That is not the question, Senator, and I wish you would answer.

Senator McCARTHY. If I may answer, I do not think that you can say that the President has ever issued an order saying you must cover up evidence of graft, corruption, treason, and communism. He has issued an order saying that, if it falls within the category which I have handed to the Chair, that, then, it will be classified; and we have never asked for any of that type of material, nor do I intend to ask for that type of material.

Mr. DE FURIA. Didn't you say, Senator—and I am referring now—

Senator McCARTHY. May I ask, Mr. de Furia, if I could have my staff hand each member of the committee a definition—

The CHAIRMAN. This matter, I was going to say, Senator, going on with the examination. I just wanted to check it. I haven't had an opportunity to read it because I have to follow the proceedings.

We want some of these definitions in the record at the proper place; we will see that they are in.

But I have not gone through this to see that it meets the standard set up by the committee.

Proceed with the examination.

Senator McCARTHY. Mr. de Furia, may I add to that answer?

Mr. DE FURIA. I am afraid I have forgotten where we were, sir.

Senator McCARTHY. I remember where we were.

Mr. WILLIAMS. I think the content of the question was whether or not he was seeking evidence on wrongdoing, graft, corruption, communism, and treason, if the giving of that information would be in violation of a Presidential directive.

Mr. DE FURIA. That is correct, sir.

Has that been answered, Mr. Williams?

Senator McCARTHY. Not fully. I intended to answer it fully in my own fashion, if the Chair will allow me to.

I will call the Chair's attention to a report by the Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws, report signed by Herbert O'Connor, Pat McCarran, William Jenner.

This is an official report of the Senate.

The CHAIRMAN. Just a minute. Let us get this question back.

Will you repeat that question again that was asked? Whether this is responsive, is the point in mind.

Mr. DE FURIA. The question, sir, is whether Senator McCarthy invited or instructed the Government employees to bring him information regardless of any classification and regardless of any order of the President or the executive department: the Army, FBI, and so forth.

The CHAIRMAN. This does not seem to be responsive to the question.

Senator McCARTHY. The answer to that is no, because I feel the President has never ordered that information on wrongdoing, graft, corruption, and treason, be classified.

Mr. DE FURIA. Does that mean, Senator, that you were interpreting the President's orders contrary to what the Attorney General of the

United States has interpreted them in official communications and opinions? Is that what you mean, sir?

Senator McCARTHY. I wouldn't compare my interpretation with the Attorney General; all I say is that I don't think our President feels that you should classify information of graft, corruption, communism, treason.

I don't think there is any such order.

The CHAIRMAN. What I think we are trying to get at, and what the committee is interested in knowing is, whether you asked for information which, under the regulations the President had set up and approved, if they had to give it, whether they should give that kind of information where apparently some instruction got out and some authority has been given to executive department officials to mark certain documents and information classified.

Senator McCARTHY. They have only got authorization to mark them classified if they come within the categories which I have handed to you, Mr. Chairman. We have not asked for that information.

The CHAIRMAN. Of course, I think that we will all agree that the President of the United States would not want to protect, nor issue an order to protect, wrongdoers.

Senator McCARTHY. Right.

The CHAIRMAN. For withholding information that might expose wrongdoers. We are getting now down to the question of the orders that have been issued and what you were attempting to get. You take one particular line, apparently the argument on the other side, and the other line is that when it is classified, or at least it has been marked classified, then these people should respect that classification and should not reveal it. That would be, of course, one of the questions the Senate will have to decide.

We have had controversy over that same thing for many years, whether we can get that information and the Senate in the majority has taken the view that we should have as much as we can get properly. It has never been decided legally as far as I know in any court as to just where that dividing line is, how much we may get, and how much the President may not give us, or can refuse to give us. We have talked a lot about it but we have actually never done anything in getting a decision.

So, it seems to me we are arguing back and forth on that general principle, when I think counsel was trying to find out with respect to the actual instruments that had been marked classified. Is that what you had in mind?

Mr. DE FURIA. Yes, sir, that's correct, sir.

Senator McCARTHY. Somebody illegally marks something classified—

Mr. DE FURIA. Do you take it upon yourself to decide that it is illegally marked classified, or if J. Edgar Hoover marks it classified, doesn't that make it classified?

Senator McCARTHY. Let's not drag J. Edgar Hoover into this.

The CHAIRMAN. That is a proper question.

Senator McCARTHY. I have had no documents marked classified by J. Edgar Hoover.

Mr. DE FURIA. The two and a fourth page document classified by the FBI was top secret.

Senator McCARTHY. No, it was not.

The CHAIRMAN. That is a matter of argument. I think the question here is what was said about it, and what Mr. Brownell reported about it, and the witness, Mr. Collier, the staff member who went to talk to Mr. Hoover—that is all part of the record now so it is only a matter of argument.

Senator McCARTHY. I would like to have it straight that the 15-page document of security information was marked by Hoover. That was never received by us. The two and a half page document with the security information deleted was never classified by J. Edgar Hoover. In fact, apparently—strike that.

Mr. DE FURIA. The chairman of this committee has ruled that that contained material that cannot be divulged and all six of the Senators on this committee have confirmed that opinion. In spite of that, is it your position that you have the right to decide in your own case whether it is confidential, is top secret, or classified, or secret, and whatever you decide shall be binding so far as what you receive and what you publish? Is that your opinion?

Mr. WILLIAMS. Mr. Chairman, I understood——

The CHAIRMAN. Make your objection.

Mr. WILLIAMS. I understood that that document which was offered yesterday and which was offered for the view of the members of the committee, was being preserved in the record and that it would be ultimately, as I thought the Chair said, for the full Senate to pass upon that particular legal question.

Now, when the document was offered here, it was not offered, as I understood it, with the names to be considered for the reasons that have been stated heretofore this morning. But I don't think there is any evidence anywhere that that particular document has been classified by Mr. Hoover. I am perfectly sure that if it had been, he would have been around and picked it up weeks ago.

The CHAIRMAN. The information, as I understood from the testimony of Mr. Collier, I think it was, who was sent down by the committee to get the information—I am speaking of the Mundt committee—his testimony was that he regarded the information in it as classified; and then it was put up to Mr. Brownell to say whether or not it could be declassified; that Mr. Hoover said he couldn't declassify that information.

So we may be talking about some technicalities, but I think the overall statement meant—at least, that is my own opinion—that the information in it, and for that reason it was classified and for that reason the document itself ought to be classified—and the committee, to make it clear, we looking this over, we received it and decided to receive it in evidence, and you can't just take out part of it and say we will only take this much in evidence.

We could not do that. But it was our opinion on the face of it, and reading it, that the document had something to do with the security of the United States and for that reason we felt it was a security document and should remain classified.

And we received it, let me make it clear, very much after the precedent set up by committees which had to pass upon confirmations of appointees by the President. Certain officers had to be confirmed by the Senate and when these appointments were sent to the Senate, the Vice President referred them immediately to various committees.

Now, we have been receiving in the past for the use only of the chairman of the committee the confidential information or the classified information from the FBI. Only chairmen of committees may see that. It has been a matter of controversy for many years. Many Senators claim they have the right to receive it as well but we received it following that precedent, that this committee would receive it and would not, unless it is declassified sometime, as indicated by proper authority in the executive departments, that it has information that will do no damage, can possibly do no damage, we would receive it as much as we received information that the chairman receives on appointment. That is as far as we have gone.

We decided that that far, at least, that it appeared to us to be classified and security information, the release of which might possibly endanger the security of the United States.

Senator McCARTHY. Counsel asked me the question of whether or not I would disregard the ruling of the Chair in this case. The answer is "No," I don't intend to make this document public. I think it does involve the security in this respect. It shows that the security of the Nation was in grave danger when Communists were handling our top-secret radar matters. As chairman of the committee, I had to investigate that.

Mr. DE FURIA. Mr. Chairman, may I suggest that my last question has not been answered yet and have it read by the reporter.

The CHAIRMAN. You may.

(The reporter read the question referred to as follows:)

The Chairman of this committee has ruled that that contained material that cannot be divulged and all six of the Senators on this committee have confirmed that opinion. In spite of that, is it your position that you have the right to decide in your own case whether it is confidential, top secret, or classified, or secret, and whatever you decide shall be binding so far as what you receive and what you shall publish? Is that your opinion?

Mr. DE FURIA. Is that your opinion?

The CHAIRMAN. You may answer the question.

Senator McCARTHY. Mr. Chairman, I thought I had answered, but I will answer again if he wants me to.

This document contains evidence of the harboring of Communists.

The CHAIRMAN. The question was: Is that your opinion?

Senator McCARTHY. Let me answer it in my own fashion, Mr. Chairman.

The CHAIRMAN. As long as you respond.

Senator McCARTHY. I will try and respond.

This document contains evidence of the harboring of Communists in one of the top-secret radar laboratories. It was a 2½-year-old document. The Communists were still there. They would still be there if I didn't—

The CHAIRMAN. Just a moment. That is not responsive.

Senator McCARTHY. I felt I had to act upon it.

The CHAIRMAN. Senator—

Senator McCARTHY. I felt I had to use the document.

The CHAIRMAN. Just a moment. We want to get along here. I don't think that is responsive. I want to be as courteous as I may, and I think you will have to abide by the rulings. I don't think that is responsive.

He asked if that was your opinion and that ordinarily would call for a yes or no answer, although I am not calling for it.

Senator McCARTHY. I can't answer that, yes or no. This is a document, information which I had to use. I would have been derelict in my duty if I hadn't used the information in my investigation, Mr. Chairman—I should have been censured.

The CHAIRMAN. That doesn't have anything to do with whether that was your opinion or not.

Senator McCARTHY. That was my opinion.

The CHAIRMAN. If that is the best answer, proceed with the next question.

Mr. DE FURIA. When you received that 2¼-page paper, Senator, you knew, did you not, that it was marked "confidential?"

Senator McCARTHY. It was a typewritten word "confidential" on it.

Mr. DE FURIA. Did you not know then, Senator, that was the highest classification for FBI material?

Senator McCARTHY. This was not——

Mr. DE FURIA. That is not the question, sir.

Senator McCARTHY. I don't know what the highest classification of the FBI material is. I think it is "top secret."

Mr. DE FURIA. Now. But at that time it was "confidential"?

Senator McCARTHY. I think it is "top secret."

Mr. DE FURIA. Now or then, sir?

Senator McCARTHY. I believe the definition of top secret has been in existence for some time. I don't know. You would have to check that.

Mr. DE FURIA. Wasn't it the testimony at the Army-McCarthy hearings at which you participated that the classification of that letter as indicated by the words "personal and confidential, via liaison," was the top classification of the FBI?

Senator McCARTHY. Yes, but this was not an FBI document, so we are talking about the Army document, and the top classification there is "secret."

Mr. DE FURIA. I am asking you when you picked up that paper and you looked at it, and you saw that it said at the top "personal and confidential." and "via liaison." that it purported to be a copy of a letter from J. Edgar Hoover, and didn't you know that that purported to be classified document from the FBI?

Senator McCARTHY. It would appear to have been classified.

Mr. DE FURIA. Regardless of that appearance, you took it, you retained it; you endeavored to make it public; isn't that right?

Senator McCARTHY. That's correct.

Mr. DE FURIA. Now, that is the——

Senator McCARTHY. I still think it should be made public.

Mr. DE FURIA. I understand, sir, but you assume that even if that were a bona fide document, you had the right to do with it what you did; is that correct?

Senator McCARTHY. Mr. de Furia, I told you 10 times I have not only the right, but the duty to investigate wrongdoing, to investigate treason; this showed wrongdoing, it showed Communist infiltration. It indicated treason at the top radar laboratory. I had to use that information as the chairman of the investigating committee.

Mr. DE FURIA. Then your answer is——

Senator McCARTHY. Let's not be puny about it.

Mr. DE FURIA. We are not being puny, and some of us are just as devoted to your sincere causes as others. I wish I could assure you of that. All I am asking you is that regardless of the classification appearing on the face of that letter, you decided that you did not have to abide by it, is that correct?

Senator McCARTHY. After talking to the officer, and discovering that there was wrongdoing, as evidenced by this document, I felt that I had the absolute right and duty to use the information contained in the document. I did that. I would do it again.

Mr. DE FURIA. That is my point, sir, that you think you have the right to determine when and how you can use classified information.

The CHAIRMAN. I think the question has been sufficiently answered. Proceed with further examination.

Mr. DE FURIA. All right, sir.

Now, do you think it would be proper for all of the other Members of the Senate to do the same thing that you think you have the right to do, Senator?

Senator McCARTHY. The chairman of the investigation committee has——

The CHAIRMAN. I would think that that is probably an improper question.

Mr. DE FURIA. I don't think so, Mr. Chairman. I am going to try to develop whether Senator McCarthy thinks he has these rights as an individual Senator or chairman of some particular committee, sir.

The CHAIRMAN. You are going quite far afield, I believe.

Mr. DE FURIA. I will abide by the ruling of the Chair, sir.

The CHAIRMAN. Well, I rule that is not proper.

Mr. WILLIAMS. I don't object to the question, Mr. Chairman.

The CHAIRMAN. I rule it is improper.

We are interested in Senator McCarthy's opinions as to his own conduct; we are not interested in what he thinks the other Senators have a right to do.

Mr. WILLIAMS. The only thing was, Mr. Chairman, Mr. de Furia was suggesting, by his examination, that Senator McCarthy thought himself in a different category, for no reason, than other Senators, and I think it is appropriate to show he does not.

The CHAIRMAN. I realize I am taking quite a responsibility in ruling against the opinion of both you lawyers; but, at the same time, I want to keep this investigation on the main objective, and that is to investigate the charges against Senator McCarthy. I can't see at the moment that is going to throw any particular light on them.

Mr. DE FURIA. Senator, do you intend that the employees of the executive department shall have the right to bring you classified material, even though a crime is committed by the informant in abstracting the information and delivering it to you?

Senator McCARTHY. No.

Mr. DE FURIA. Do you consider, Senator, in the performance of your committee assignments, that you are a law-enforcement officer?

Senator McCARTHY. No.

Mr. DE FURIA. Senator, you have referred, as the basis, in part at least, of your position, to the LaFollette Act; is that correct?

Senator McCARTHY. Right.

Mr. DE FURIA. Now, have you read the entire act which is found in 5 United States Code, section 652?

Senator McCARTHY. I think I have. I read all the pertinent parts of it.

Mr. DE FURIA. Mr. Chairman, because of the importance of this, I would like to have the entire act, sir, entered in the record at this point since it has not been presented yet.

Mr. WILLIAMS. I presented it long ago, Mr. de Furia.

Mr. DE FURIA. I think you did by reference, Mr. Williams, but I think all of the sections should be in so that the members of the committee, and later the Members of the Senate, may be able to interpret and understand the act by not reading just the last section, but all the sections in the act.

The CHAIRMAN. May I see that?

It doesn't seem to be a very lengthy act but it may be convenient to have it in the record. So, we will order it printed at this point.

Sec. 652. Removal without pay from classified civil service—(a) Only for cause: Notice: Copy of charges: Time to Answer: Examination, record: Persons exempt

No person in the classified civil service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall (1) have notice of the same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges, with affidavits; and (4) be furnished at the earliest practicable date with a written decision on such answer. No examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer or employee directing the removal or suspension without pay. Copies of the charges, the notice of hearing, the answer, the reasons for removal or suspension without pay, and the order of removal or suspension without pay shall be made a part of the records of the proper department or agency, as shall also the reasons for reduction in grade or compensation; and copies of the same shall be furnished, upon request, to the person affected and to the Civil Service Commission. This subsection shall apply to a person within the purview of section 653 of this title, only if he so elects.

(b) Reinstatement or restoration to duty: Compensation: Deductions: veterans: Removal by reduction in force

(1) Any person removed or suspended without pay under subsection (a) who, after filing a written answer to the charges as provided under such subsection or after any further appeal to proper authority after receipt of an adverse decision on the answer, is reinstated or restored to duty on the ground that such removal or suspension was unjustified or unwarranted, shall be paid compensation at the rate received on the date of such removal or suspension, for the period for which he received no compensation with respect to the position from which he was removed or suspended, less any amounts earned by him through other employment during such period, and shall for all purposes except the accumulation of leave be deemed to have rendered service during such period. A decision with respect to any appeal to proper authority under this paragraph shall be made at the earliest practicable date.

(2) Any person who is discharged, suspended, or furloughed without pay, under section 863 of this title, who, after answering the reasons advanced for such discharge, suspension, or furlough or after an appeal to the Civil Service Commission, as provided under such section, is reinstated or restored to duty on the ground that such discharge, suspension, or furlough for the period was unjustified or unwarranted, shall be paid compensation at the rate received on the date of such discharge, suspension, or furlough for the period for which he received no compensation with respect to the position from which he was discharged, suspended, or furloughed, less any amounts earned by him through other employment during such period, and shall for all purposes except the accumulation of leave be deemed to have rendered service during such period.

(3) Any person removed or suspended without pay in a reduction in force who, after an appeal to proper authority, is reinstated or restored to duty on the ground that such removal or suspension was unjustified or unwarranted

shall be paid compensation at the rate received on the date of such removal or suspension, for the period for which he received no compensation with respect to the position from which he was removed or suspended, less any amounts earned by him through other employment during such period, and shall for all purposes except the accumulation of leave be deemed to have rendered service during such period. A decision with respect to any appeal to proper authority under this paragraph shall be made at the earliest practicable date.

(c) Membership in associations, clubs, etc., no cause for reduction in rank or compensation or removal

Membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said postal service, or the presenting by any such person or groups of persons of any grievance or grievances to the Congress or any Member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service.

(d) Right to petition Congress

The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with. (As amended June 10, 1948, ch. 447, 62 Stat. 354; 1949 Reorganization Plan No. 5, effective August 19, 1949, 14 F. R. 5227, 63 Stat. 1067.)

The CHAIRMAN. While I am at it, on these documents, we will also have printed in the record at this point the memo submitted by Senator McCarthy, which purports to be taken from Administrative Instruction No. 8, Revised, Office of the Secretary of Defense, July 1954.

[Taken from Administrative Instruction No. 8 (Revised), Office of the Secretary of Defense Security Instructions, July 1954]

4. Classification Categories

Official information originating in the Office of the Secretary of Defense which requires protection in the interests of national defense shall be limited to three categories of classification, which in descending order of importance shall carry one of the following designations: TOP SECRET, SECRET, or CONFIDENTIAL. No other designation shall be used to classify defense information, including military information, as requiring protection in the interests of national defense, except as expressly provided by statute.

(a) Top Secret.—The use of the classification TOP SECRET shall be limited to defense information or material which requires the highest degree of protection. The TOP SECRET classification shall be applied only to that information or material the defense aspect of which is paramount, and the unauthorized disclosure of which could result in exceptionally grave damage to the Nation such as—

(1) Leading to a definite break in diplomatic relations affecting the defense of the United States, an armed attack against the United States or its allies, a war; or

(2) The compromise of military or defense plans, or intelligence operations, or scientific or technological developments vital to the national defense.

(b) Secret.—The use of the classification SECRET shall be limited to defense information or material the unauthorized disclosure of which could result in serious damage to the Nation, such as—

(1) Jeopardizing the international relations of the United States.

(2) Endangering the effectiveness of a program or policy of vital importance to the national defense.

(3) Compromising important military or defense plans, scientific or technological developments important to national defense.

(4) Revealing important intelligence operations.

(c) Confidential.—The use of the classification CONFIDENTIAL shall be limited to defense information or material the unauthorized disclosure of which could be prejudicial to the defense interests of the Nation, such as—

(1) Personal security investigations and other investigations which require protection against unauthorized disclosure.

(2) Operational and battle reports which contain information of value to the enemy.

(3) Intelligence reports.

(4) Military radio frequency and call sign allocations of special significance or those which are changed frequently for security reasons.

(5) Devices and material relating to communications security.

(6) Information which indicates strength of our troops, air and naval forces in the United States and overseas areas, identity or composition of units, or quantity of specific items of equipment pertaining thereto.

(7) Documents and manuals containing technical information used for training, maintenance, and inspection of classified munitions of war.

(8) Operational and tactical doctrine.

(9) Research, development, production, and procurement of munitions of war.

(10) Mobilization plans.

(11) Matters and documents of a personal and disciplinary nature, the disclosure of which could be prejudicial to discipline and morale of the Armed Forces.

(12) Documents used in connection with procurement, selection and promotion of military personnel, the disclosure of which could violate the integrity of the competitive system.

Official information of the type defined in these two subparagraphs will be classified as "Confidential" only if in fact the unauthorized disclosure of such information could be prejudicial to the defense interests of the Nation. If such information is not strictly defense information but nevertheless requires protection, it will be safeguarded by means provided for in other appropriate instructions.

The CHAIRMAN. Both of those will be for the convenience and information of the committee and the Senate.

Mr. CHADWICK. Mr. Chairman, will you indulge us for 5 minutes, or a minute, if we can so quickly dispose of it?

The CHAIRMAN. We will suspend—

Senator CASE. Mr. Chairman, I have one question I would like to ask.

The CHAIRMAN. Senator Case.

Senator CASE. Senator McCarthy, who makes the determination of classification—the receiver or the sender or a letter?

Senator McCARTHY. I think that would vary. When I was in the Marine Corps, sometimes we would upgrade or downgrade things of that type.

Senator CASE. Who has the right to downgrade it?

Senator McCARTHY. The proper officer, and that is set out in the law, and I couldn't quote that law.

Senator CASE. The reason I asked the question is because, in answer to some question by Mr. de Furia, a little while ago, you said that you regarded the two-and-a-quarter page document as an Army document rather than an FBI document.

Senator McCARTHY. That is right.

Senator CASE. Now, my recollection was that that document purported to be a letter prepared by the FBI in carrying at least the typewritten signature of J. Edgar Hoover.

Senator McCARTHY. But with material deleted by the Army, which would make it an Army document. Once they take and delete material, and that appears obviously on the face of the letter, that they deleted—take paragraph 5—it shows the entire paragraph is deleted—it appears that the analysis of the security information was made by someone in the Army, certainly not by the FBI, because, as we know, they don't make the analysis.

Senator CASE. Ordinarily, is not the privilege of a letter the privilege of the writer of the letter?

Senator McCARTHY. I, frankly, don't know what the rules and regulations are. I assume if a top-secret document were written and not classified by the sender, the receiver would be duty bound to stamp it "Top Secret."

Likewise, if the receiver deleted——

Senator CASE. Was the——

Senator McCARTHY. Likewise, if the receiver deleted the security information——

Senator CASE. Was the——

Senator McCARTHY. He would be entitled to give it a different classification.

Senator CASE. Was the inscription on the document—"Personal and Confidential"—a part of the carbon reproduction of the letter and apparently in the same typewriter type as the body of the letter and the signature on the letter?

Senator McCARTHY. I would have to see the letter to confirm that, but my best recollection is that those words were on the document.

Senator CASE. And it was part of the carbon reproduction?

Senator McCARTHY. By "a part of the carbon reproduction," do you mean was it——

Senator CASE. The classification marked on the letter?

Senator McCARTHY. The same type of type as the rest of the letter, I think, yes.

Senator CASE. And it was part of the carbon reproduction?

Senator McCARTHY. I don't know what you mean by that. It was in the same type as the rest of it.

Senator CASE. But it was not original typing; it appeared in carbon?

Senator McCARTHY. That's right.

Senator CASE. I do not understand how you would say, then, that that is an Army document, if it purported to be a letter from J. Edgar Hoover, and it seems to me the classification would rest with the sender of the letter.

Senator McCARTHY. Senator Case, when Hoover sends a document to the Army and they take out the pertinent parts, delete the security information, from then on, while it is a letter from J. Edgar Hoover, it is an Army document; and if there is no security information, they can classify it as they see fit.

Senator CASE. Now, of course, I recognize that it is not clearly in evidence that the document which Walter Winchell testified he exhibited to Mr. Hoover is clearly a copy of the document which you had.

I recognize that to be true.

However, the general supposition is that it was; but, in any event, Mr. Hoover said, of the document that Winchell had, that he would arrest him if he printed that.

Senator McCARTHY. No. No, he didn't say that.

Mr. WILLIAMS. He hadn't seen it, Senator.

Senator McCARTHY. He said——

Senator CASE. No. Mr. Hoover——

Senator McCARTHY. He said that if he printed the document that Brownell said was classified, the two-and-a-half-page document, he would have to arrest him. He didn't say anything about the document Winchell had, as the testimony will show.

Senator CASE. I don't pretend that there was any identification between the two documents. I don't think that has been established, but I do recall that in the report of the Mundt committee there is a paragraph which says that Mr. Cotter, apparently an employee of the committee, contacted Mr. Hoover and asked him about the document which you presented to the committee and that Mr. Hoover is reported in the report of the Mundt committee as saying it carried material similar to a memorandum.

I don't know that there is any testimony that he specifically said that the document that you had was classified. I do not know that there was any testimony on that point; but, in any event, if the document on its face was a document addressed to an officer of the Army, and purportedly carrying a typewritten copy of the signature of Mr. Hoover, I do not think that the receiver of the document has the right to declassify it, even if he makes excerpts from it.

Senator McCARTHY. Regardless of what you or I think, Senator Case, a document that is properly classified bears a certain inscription. As I recall the inscription, it states something to the effect that the unauthorized disclosure of this material is a violation of the Espionage Act, et cetera, et cetera, et cetera. That, I believe, is on every properly classified document.

That was not on this document. You can assume that this was the nonsecurity information from a letter from J. Edgar Hoover on very, very important—

Senator CASE. It is apparent that your opinion as to whether or not it was security information and the opinion of the members of the committee is not the same. It is at variance. I might say that I think there is information in there other than that which you have indicated, which makes it of a security character.

It happens that I have handled a good deal of security information in the Committee on Armed Services, and I have never felt that I had the privilege, after I had received communications from branches of the Defense Department, where it is classified as confidential, I have never supposed that I had the right to abstract or excerpt those communications and make them public.

Senator McCARTHY. Were you aware of the fact that Mr. Coleman was listed in that as an espionage agent under Executive signed testimony? You expressed the opinion, and I have got a right to testify.

The CHAIRMAN. He is not testifying.

Senator McCARTHY. When a member of the committee expresses an opinion, that I assume is in the nature of a question, I shall respond to it.

Senator CASE. I did not put it in the nature of a question, but whether you thought the receiver of a letter or a communication had the right to declassify it, and your answer has been made that you think he does.

Senator McCARTHY. My answer has not been made. When you make an observation—

Senator CASE. If that is not your correct answer, let us have your correct answer.

Senator McCARTHY. Senator Case, let us have a correct understanding of it.

The CHAIRMAN. Let me make this general warning.

Senator McCARTHY. Senator—

The CHAIRMAN. Just a moment, Senator. I want to warn all of you that in discussing this particular document, that the committee has ruled that it is classified, that it is security information, so I do not want any of you inadvertently to disclose the contents of that, so please refrain. That is a general warning. Now please proceed.

Senator McCARTHY. I will certainly follow that. I have a question of the Chair.

When a member of the committee expresses an opinion during his questioning of me, even though he says it is not in the nature of a question, may I respond to that opinion, and also that ours is diverse to it, and the reason for it?

If not, we will have cross-examination here in the nature of speeches, which I cannot respond to.

Senator Case made an observation which I hope is not shared by the balance of the committee. I think I have a right to respond on that. I think we should have a general rule on that. I am not asking the Chair to rule on it now. It is now 12:30, but in the opening of the afternoon session I would like very much to have a ruling on that matter.

The CHAIRMAN. I cannot say offhand what the members of this committee can do without the committee itself deciding that matter.

We said at the beginning, in laying down the rules, that members of the committee would be permitted to ask questions following Mr. de Furia's questions or Mr. Chadwick's questions, but that is as far as we got. We will have a chance to check what he says.

We will now recess until 1:30. We do not want to run too late tonight or this afternoon.

I have an announcement to make. The committee expects to call to testify, and I do not know whether we will get to them today or not, but it expects to call General Lawton, Captain Woodward, General Zwicker, Roy Cohn, James Juliana, and George Anastos, if we can find him. I do not think they have found him yet.

I am stating that for the information of Senator McCarthy and his counsel, and the press have been pressing a lot of questions on me and I have declined to answer a lot of them.

Mr. WILLIAMS. Is the cross-examination of this witness completed, Mr. Chairman?

The CHAIRMAN. No. The committee members have not had an opportunity to interrogate Senator McCarthy yet. We have decided to allow counsel to examine first, and I have not checked with the committee members to find out whether they want to ask any questions.

Mr. WILLIAMS. I assume that would be completed before the other witnesses would follow.

The CHAIRMAN. That is right, I have merely announced what witnesses will follow.

(Whereupon, at 12:38 p. m., a recess was taken until 1:30 p. m., the same day.)

AFTERNOON SESSION

Thereupon, at 1:40 p. m., the committee reconvened.

The CHAIRMAN. The committee will resume session.

As I understand, Mr. Chadwick, committee counsel, has no further questions to ask of the witness, Senator McCarthy.

Mr. CHADWICK. That is correct, sir.

The CHAIRMAN. The Chair had announced that Senators who are members of the committee would be given an opportunity to question Senator McCarthy following the committee staff's examination.

TESTIMONY OF SENATOR JOSEPH R. McCARTHY

Senator McCARTHY. Mr. Chairman, could I add further to one of the answers I gave Mr. de Furia? Just so it will be complete, we were talking about the Presidential directive, and I said I was sure the President would not sign an order excluding evidence of wrongdoing coming to a Senate committee. I want to make it very clear that if the President did sign an order which would allow the classification of evidence of wrongdoing, that order would be unconstitutional and illegal, and it would not be followed.

The CHAIRMAN. I was waiting for the Senators, members of the committee to be present, so they could ask questions. They are not all here, yet. I do not know whether they have questions to ask or not. We will start, however, with Senator Ervin. Probably he has some questions. Senator Ervin is recognized.

Senator ERVIN. Mr. Chairman, I would like to ask this question of Senator McCarthy:

Senator, when you made the statement which Mr. de Furia characterized as an invitation to the employees of the executive departments, did you mean to invite those employees to bring to you, as chairman of the Investigating Subcommittee, information relating to corruption, wrongdoing, communism, or treason in Government, even though such employees could find such information only in documents marked "classified" by the department in which such employees were working?

Senator McCARTHY. Regardless of where they found it, I invited them to bring evidence of wrongdoing.

Senator ERVIN. Then your answer to my question would be "Yes"?

Senator McCARTHY. Yes.

Senator ERVIN. Mr. Chairman, I would like to ask one additional question.

The CHAIRMAN. You may ask as many as you like. We are still waiting for other Senators to appear.

Senator ERVIN. When this so-called 21¼-page document or paper writing, I will call it, was brought to you, did you consider it to be a copy of a bona fide letter written by J. Edgar Hoover to General Bolling?

Senator McCARTHY. Yes, with the deletions that were indicated on the face of the letter.

Senator ERVIN. That is all.

The CHAIRMAN. Senator Johnson?

Senator JOHNSON. No questions.

The CHAIRMAN. Senator Carlson?

Senator CARLSON. I do not believe I have any questions.

The CHAIRMAN. The other Senators have not yet arrived.

Mr. WILLIAMS. I have a couple of questions I wanted to ask the Senator, on redirect examination. I will be glad to do that now, if desired.

The CHAIRMAN. You may proceed, with the understanding that all the Senators may have opportunity to inquire later.

Mr. WILLIAMS. There was a question asked this morning, which I think probably needs clarification. Senator McCarthy, I believe the chairman asked you this morning what information you had as of the time that you wrote your first letter critical of the Gillette committee—what information you had that they had exceeded the bounds of the resolution under which they were purporting to operate. I think that becomes important. I do not know that it is covered fully.

Senator McCARTHY. Yes. I will try to answer that, Mr. Williams. Keep in mind that I am relying upon my memory, now, and I will give this as best I can.

I knew that they had gone back to the Goma bank account, and I was a lawyer making, I think, \$100 a month or something. They found no wrongdoing.

Mr. WILLIAMS. That was just what they were interested in?

Senator McCARTHY. They spent considerable time on that. It was not within the purview of the Benton resolution, even assuming the resolution was legal. I had heard that they were checking my record in law school as to grades and all that sort of thing. They were checking the 1944 campaign, going into the background of those who had contributed to a campaign, which was unsuccessful, going into the finances of, I think, all of the members of my family and those who had contributed to the 1944 campaign, making a detailed investigation of my father, who had died before I was elected. Dan Buckley had come to me before that time, and he was one of the committee investigators. He told me that when he developed information that would not uphold the Pentagon charges, not only was the committee critical of him, but that other Senators were informed of the material and called him and castigated him.

I am not sure if the staff information had been released to the very antagonistic paper, the Providence Journal, before that time, but I believe it had been.

Again Mr. Williams asked me, and I have difficulty placing this as to time. I know that they got photostats of all the correspondence at the bank, which had nothing to do with the investigation, long before I was elected Senator, and gave that to opposition papers in my State. They ran that in serial form. I think they headed them the "Dear Joe" letters or something like that.

Mr. WILLIAMS. This morning you undertook to give an answer on this subject of solicitation of information of wrongdoing and the answer was not responsive. I believe you were attempting to focus the committee's attention upon a committee report which was germane to this subject.

Will you tell us what that report was?

Senator McCARTHY. Two reports, Mr. Williams, by committees of the Senate; one entitled "Subversive and Illegal Aliens in the United States."

Mr. WILLIAMS. What is the date of that?

Senator McCARTHY. The date of that is 1951, Committee on the Judiciary, signed by Herbert O'Connor, the former Senator from Maryland, Pat Carran, the present Senator from Nevada, William Jenner, the chairman of one of the Senate committees at this time, two of the Senate committees.

I would like to quote from this as an official invitation from a Senate committee to Federal employees.

I quote from the last page:

The subcommittee is determined that, in the interest of internal security of the United States, there shall be a vigorous, impartial enforcement of the immigration laws, and, accordingly, invites each employee of the Immigration and Naturalization Service to report to the subcommittee any instance coming to his attention of laxity in the enforcement of such laws or any other matters affecting the national security.

And there is another part here, other material which is not pertinent. And then the final recommendation:

The subcommittee recommends that copies of this report be made available to all employees of the Immigration and Naturalization Service.

So that this was an invitation that was sent to all the employees of the Immigration and Naturalization Service and the Justice Department.

I have one other report.

The CHAIRMAN. May the committee have the copy of that document which you just read?

Senator McCARTHY. Yes, certainly.

I have one other report, Mr. Williams, the report entitled "Interlocking Subversion in Government Departments."

It is a report of the subcommittee to investigate the administration of the Internal Security Act and other internal security laws, and I quote from page 26:

The subcommittee recognizes not only that ex-Communists could be a source of much additional information, but in addition many Government workers who have always been loyal to the United States Government did learn by their contact with conspirators some details of subversion. If these people will come forward either to the Federal Bureau of Investigation or to the congressional committees, great strides will be made in protecting the security of this country.

The subcommittee is aware of the campaign being conducted against the fact-gathering agencies, both of the executive and of the legislative and must deplore the inroads this campaign has made. This campaign is based, in part, on misstatements of the power and of the functions of the respective security agencies which are clearly not understood.

So Mr. Williams, here we have an invitation for government employees to come forward and give evidence of subversion in government.

This is signed by William E. Jenner, chairman; Arthur V. Watkins, who is chairman of this committee; Robert C. Hendrickson, Herman Welker, John Marshall Butler, Pat McCarran, James Eastland, Olin Johnson, and to the best of my knowledge the Senate approved the filing of this report, so that you here have apparently Senate approval of the invitation to government workers to come forward and give information about subversion.

Mr. WILLIAMS. Now, I want to clear up one final matter and I will be through.

The CHAIRMAN. May we have that document also, Senator?

Senator McCARTHY. Yes, sir; that is page 26 from which I read, Mr. Chairman.

Mr. WILLIAMS. There has been a lot of conversation, Senator McCarthy—

Senator McCARTHY. May I say, Mr. Williams, this, I believe, was approved by the Judiciary Committee, the full Judiciary Committee.

Mr. WILLIAMS. There has been a lot of questioning and there has been some conversation this morning about this two-and-one-quarter

page document. It has repeatedly been said that this was classified and the reason for the statements that it is a classified document have been that the Attorney General has said that it is a classified document.

When did the Attorney General advance his opinion on that subject?

Senator McCARTHY. The Attorney General did not state that this was classified until sometime during the Stevens-McCarthy hearing. Up until that time there was no indication of the classification except the heading which I understand is put on many letters saying "Confidential," which is not a classification.

If it is an official classification, I understand there is a stamp stamped on the document classifying it and carrying certain excerpts from the Espionage Act.

Mr. WILLIAMS. Now, at the time that you received this particular document which we are speaking of at the moment, was any information given to you regarding wrongdoing or inefficiency in the executive departments?

Senator McCARTHY. Yes, there was.

Mr. WILLIAMS. By the informant?

Senator McCARTHY. Yes, there was. The informant pointed out that there was.

Mr. WILLIAMS. I want you to say what that is, without infringing on the Chair's ruling that we may not go into the contents of the document.

Senator McCARTHY. I will not go into the contents of the document. The man who brought this to me said that he was deeply disturbed. He knew that there were some 6 or 7 reports and I gave the dates of the reports before the Mundt committee, to the effect that there was Communist infiltration in our top secret radar laboratories.

He felt and I felt that that was dangerous to this Nation unless something was done and that men would die because of it, and some undoubtedly will die because of the 2½-year delay.

Mr. WILLIAMS. Now, without covering anything that infringes again on the Chair's ruling, the name of Aaron Coleman was mentioned here this morning and it was mentioned during the Army-McCarthy hearings, and for that reason I ask you a question about it now: Had he not been examined in open session months and months before the Army-McCarthy hearings?

Senator McCARTHY. All of the facts on Coleman, I believe, had been divulged by the investigating committee long before the Army hearing.

The CHAIRMAN. Which committee do you refer to? You see, we have several. We have the Internal Security Committee, subcommittee of the Judiciary Committee, and we also have the committee that you head. So, for the record, I want to have it cleared up as to which committee you refer to.

Senator McCARTHY. I am referring to the committee of which I was chairman.

Mr. WILLIAMS. I see that Senator Case and Senator Stennis are here now and I defer to them.

The CHAIRMAN. The Chair wants to refer to the two reports from the Internal Security Subcommittee of the Judiciary Committee of the Senate.

I note that in each case there was no reason for the Senate not to read it.

The other one, the report of July 30, 1953, which is signed unanimously by all members of the subcommittee, Internal Security Subcommittee of the Judiciary Committee of the United States Senate, there is no statement there that would indicate in any way that the committee was inviting anybody to bring in classified material or security information. It is very, very general. I think, of course, the Senator has read it so it is in the record. I merely want to call attention to that for whatever it is worth. It is in evidence.

Senator McCARTHY. May I say—

The CHAIRMAN. Inasmuch as my name was mentioned, I felt it was only fair to state—

Senator McCARTHY. Mr. Chairman, may I say that the reading of those two documents will show that the committees were inviting information of wrongdoing, subversion, and they did not exclude anything that was stamped by "classified." It was a general invitation. It was almost identical in language with the invitation which I extended to Government employees.

The CHAIRMAN. I don't intend to argue the question of whether it is or is not. I think the evidence will show—it's all in the record—but what the committee was doing there, as I recall, in a cursory or rather hurried reading of it now—it seems clearly to be in line with the invitation extended by the FBI to anyone who had information with respect to these matters to bring it to the FBI. It was along the same line.

However, I have read the exact language of these two documents. That language is in the record, and what you said before the Army-McCarthy controversy committee hearings, and which you said here, is all there so it will be there for the benefit of the Senate as it wishes to study those matters.

My only purpose in commenting is to point out that we considered a rather general invitation without going into the point of asking anyone to bring in what might be considered classified information.

I don't think there was any intention at that time to ask anyone to do that. That is, as I recall, when this matter was discussed in the committee.

Senator McCARTHY. I don't want to argue with the chairman, but may I say that I repeatedly requested information of wrongdoing, graft, corruption, communism, treason. I did not mention the word "classified" either. I used about the same language you used there in an official document and lest the record not be clear, you said this was principally requested to give to the FBI.

The CHAIRMAN. This is the same language the FBI used in requesting people generally to furnish them with information.

I don't know whether it was the FBI Director or the President, or the head of some department who did that, but there was a request to the people of the United States, anybody, everybody, including government officials, to give what information they could give on any of these matters.

Senator McCARTHY. I don't want to belabor this point, but just so we all know what is in this request, it is a request to all Federal employees to bring all information which they had of subversion to

congressional committees. That is what I have asked them to do, also.

The CHAIRMAN. All right; it is all in the record.

Mr. WILLIAMS. Mr. Chairman, I think it would be most helpful—I don't want to burden this record with additional materials, but I feel that as part of a legal position to which we adhere, it would be helpful for the Senate to have in the record of this proceeding the report of a discussion in the House which ultimately resulted in a resolution by the House.

I have reference to the colloquy that is reported in volume 94, part 4, of the Congressional Record, the 80th Congress, 2d session, beginning at page 4777.

The CHAIRMAN. Without reading it, will you submit it to us and let us examine it.

We can rule on it later.

Mr. WILLIAMS. May I tell you what I have reference to?

The CHAIRMAN. I thought you had finished.

Mr. WILLIAMS. I am not going to read it. Pages 4777 to 4783. That is a report of some proceedings on April 22 of 1948. I think that this fairly accurately states our legal position on this point.

The CHAIRMAN. In other words, you are citing it as you would a case in court, just for the legal arguments, and not for any factual matters.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. We will take a look at it and see if it fits that situation. If it does, we will probably receive it. At any rate, the committee will consider it.

Mr. WILLIAMS. I am through.

The CHAIRMAN. All right.

Two Senators were not here when we were examining Senator McCarthy. They will now have an opportunity.

Senator Case, do you have any further questions to ask Senator McCarthy?

Senator CASE. I do, but I will be glad to defer to Senator Stennis.

Senator STENNIS. Go ahead.

Senator CASE. Senator McCarthy, how long did you have this two-and-a-quarter page document before you sought to bring it to the attention of the Secretary of the Army?

Senator McCARTHY. I think, Senator Case, I received it in late April or early May. It was one of many—

The CHAIRMAN. Which year?

Senator McCARTHY. 1953. The staff was instructed to conduct an investigation of Communist infiltration at Fort Monmouth. This was only one of the many cases of information we had. When we verified the fact that there was Communist infiltration, we immediately brought it to the attention of Mr. Stevens.

Senator CASE. You brought it to the attention of Mr. Stevens at that time, in 1953?

Senator McCARTHY. In 1953.

Senator CASE. The document—

Senator McCARTHY. I don't think we mentioned the document. We knew he had that information in his files. We brought it to his attention, the fact of subversion. We invited him to send anyone he cared to to attend our executive sessions, to hear all the evidence.

Senator CASE. Mr. Stevens had that before him in 1953, April or May?

Senator McCARTHY. Well, we didn't ask what we call evidence then, but during the hearings he confirmed the fact that he did have the 15-page document, which included all of the two-and-a-quarter page document, so that it is now known that he had the document.

I was sure he had it then. That was confirmed during the Army hearings.

Senator CASE. Do you make a practice, when evidence of wrongdoing is brought before you, for your committee communicating with the head of the agency involved in an attempt to get the wrongdoing stopped at the earliest possible date?

Senator McCARTHY. Not just on the first trip. We try and verify the facts first. We have got a small staff. We cannot make the investigation ourselves. We turn the tip over to the FBI, if it is within their jurisdiction.

Senator CASE. This particular document was in your possession for approximately a year before you brought it to the attention of the Secretary?

Senator McCARTHY. No, no. I think the staff inquiries commenced within a matter of a couple of months after that. I would have to ask the staff on that.

Roy, a couple of months after that you started the staff inquiries?

(Roy shook his head in the affirmative.)

Senator McCARTHY. And the military was notified whom we wanted to interrogate so they knew we were conducting an investigation of subversion at Fort Monmouth.

Senator CASE. I don't care to labor the point. I was merely seeking to find out if a part of the time that elapsed during which this document was in existence, if part of that time elapsed after it had come into your possession and whether or not you were making efforts through the head of the agency to see that it was brought to their attention.

Senator McCARTHY. We got to this matter as soon as we possibly could.

Senator CASE. I think the record is probably complete on that.

There is one point, and I think it goes to one of the category charges that has not been dwelt on very much. In fact, I think about the only thing that has come up on it in connection with the whole hearing has been the recital of the statement attributed to you as having been made with respect to Senator Hendrickson and the testimony which your counsel developed with respect to a telephone conversation that you had with Senator Hendrickson.

Senator McCARTHY. Right.

Senator CASE. Now, that particular category had two allegations in it, so to speak, one dealing with your remark about Senator Flanders, and substantial testimony was developed on that by incorporating in the record his speech.

The only testimony on the Hendrickson statement—that is, at least in justification of it, or to show provocation—that I recall, was the report of your telephone conversation with him in which there was some discussion about whether or not he was going to sign your report.

Yesterday, it happened that little additional testimony came in, I think more or less by accident, I don't think it was intended to bear upon that, but it might have some relationship to it and I want to direct an inquiry to that.

You will recall that early in the hearing your counsel made some reference to the so-called addendum and I think read with some emphasis a sentence or two in that addendum which spoke of certain of the matters in the HHH report as being moot, since they related to matters which had transpired prior to the 1952 election.

Now, it developed in Senator Hayden's testimony yesterday that that addendum which carried this statement some of the matters were moot was written by Senator Hendrickson.

I want you to think about that just a minute and the implications of it, that the sentence or two in that addendum which spoke of certain matters as being moot was authored by Senator Hendrickson and the testimony of Senator Hayden then concurred in by Senator Hennings.

The question I want to direct to you is:

At the time you made the utterance with respect to Senator Hendrickson, did you know that Senator Hendrickson was authoring or had authorized this addendum, including this sentence or two upon which your counsel has placed some emphasis as declaring certain issues to be moot.

Senator McCARTHY. No; I did not.

May I say, Mr. Case, I very much dislike discussing the Senator Hendrickson matter. I will do it if you insist.

I like him personally. Despite the fact we disagreed very vigorously at the time he signed the report, I consider him a friend of mine at this time.

If you want to go into that matter, I will.

Senator CASE. Well, I do, and I think, in fairness to you, it should be gone into a little bit further.

Senator McCARTHY. All right.

Senator CASE. You have now testified you did not know of his position as set forth in the addendum at the time you made the utterance.

Senator McCARTHY. No.

Senator CASE. Earlier, during the day, you referred to the fact that in the Senate if a Member of the Senate refers disrespectfully to another Senator, he may be taken off the floor, that is, he may be seated and, as you and I both know, and as the members of the committee know, it is customary then in the Senate for someone to move that the Senator be permitted to proceed in order. That could be an offense referring to a Senator or to a State.

My recollection is that in the House of Representatives a somewhat similar rule exists: That if a Member utters a disrespectful word—but there it is not merely with respect to a Member of the House, but also a Member of the Senate—he may be seated upon some Member of the House or the Speaker calling him to order. There, I think, there are two courses: Either the Speaker will frequently say, "The Member may proceed, but in order," or a Member may demand that the words be taken down and presented for the Speaker to determine they are a transgression of the rule; but in that case, before the Speaker makes the determination, it frequently happens that the

Member of the House who has uttered the offensive words will ask to have them withdrawn. If he does ask to have them withdrawn, he is accorded that courtesy, permitting them to be withdrawn.

I was in the House for a number of years and that is my recollection of the procedure.

This utterance which you are alleged to have made with respect to Senator Hendrickson was not made on the floor of the Senate, but I, personally, feel that, in fairness to you, now that you have said that the utterance was made at a time when you did not know that Senator Hendrickson authored the addendum, you should have an opportunity to say whether or not, as of today, in the light of this knowledge of Senator Hayden's testimony yesterday, you would make that utterance now, or whether you would reaffirm it.

Senator McCARTHY. There is no way of withdrawing a statement that you make publicly. I made this statement in the light of the report, a report which was entirely dishonest, in my opinion went far beyond the resolution.

Senator Hendrickson had told me that he had not read it, said he would sign it, but he would disagree insofar as it digressed from the facts.

The report contained statements such as this: "It is rumored that; reports were heard that; McCarthy may have done this; we have no evidence to that effect."

I made the statement in the light of his signing that report, which was based 95 percent on hearsay, and not upon evidence before the committee and there is no way on earth you can withdraw a statement you made 3 or 4 years ago. You could withdraw a statement from the record in the Senate, but that is an entirely different thing from withdrawing a statement you make about an individual.

May I say, Senator Case, if I may, and this may not appear to be responsive, I feel a Senator enjoys no special status, except on the Senate floor. When he is off the Senate floor, any man can discuss him just as freely as he will discuss someone who is not a Senator. In other words as I said yesterday, there is no halo that surrounds the throne.

Senator CASE. The other day, Senator, testifying with regard to the Zwicker incident, you took occasion to reaffirm the statement that you had made and said you stood upon that which you said and you would say it again today.

Now, I am not referring specifically to the Zwicker incident, but I am just calling attention to a somewhat analogous situation and I wondered if, in the light of the new evidence, as to Senator Hendrickson's initiative and position with respect to the report, whether or not now that would make any difference in the utterance which you made.

Senator McCARTHY. I would have no comment on the Hendrickson statement at this time.

Mr. WILLIAMS. I don't think, Mr. Chairman, that was a proper question. The charge here is that Senator McCarthy made a statement, and the question is whether that statement is a censurable act.

Senator McCarthy explained, on direct examination, the context in which that statement was made.

I don't think it becomes germane or relevant in this inquiry to probe what he now thinks about any Member of the Senate because there is no charge on that, as to his feelings, his likes or dislikes with respect to other persons sitting in the Senate at this moment.

So, I think that question is improper and I ask it go out of the record.

Senator CASE. Mr. Chairman.

The CHAIRMAN. Senator.

Mr. WILLIAMS. I am sorry to have to say——

The CHAIRMAN. Well——

Mr. WILLIAMS. A question which is propounded by one of the committee members is improper; but I do think it is and I would be less than honest if I didn't say that to the chairman and ask that it go out.

Senator CASE. Mr. Chairman, I am not going to insist——

The CHAIRMAN. You have made a record. Now, let's hear from Senator Case as to what the justification is.

Senator Case.

Senator CASE. May I say, Mr. Chairman, I thought the question, on the face of it, was in the interest of Senator McCarthy.

I had called attention to the fact that in the House, if a Member withdrew his remarks, that it operated to cleanse the record, so to speak.

I had called attention to the fact that there had been some new testimony adduced as to the position of Senator Hendrickson with respect to the report, and I wanted to give Senator McCarthy the opportunity, so to speak, to change the record.

Mr. WILLIAMS. I don't think——

Senator CASE. The question was not prejudicial against Senator McCarthy. I don't care if it is answered or not. If he doesn't want to answer it, or if his counsel doesn't want him to answer——

The CHAIRMAN. He said he didn't think he should make any comment.

Mr. WILLIAMS. I don't think he should make a comment on what his present pleadings are regarding any other Senator, because there is no issue at stake on that subject matter, and I still repeat—I say this most respectfully, Senator Case—I say this most respectfully to you, sir, because I know the question was asked in good faith, but I believe it was improper.

The CHAIRMAN. By the way, here is the situation you confront the chairman with: Senator Case is a coequal member of this committee. If we were a court, which we are not, and one of the judges asked the question, the other judges are not going to say his question cannot stay in the record.

Mr. WILLIAMS. Well, I am satisfied to let the record stay at its present posture, Mr. Chairman.

The CHAIRMAN. That is where it will stay.

Mr. WILLIAMS. Thank you.

Senator McCARTHY. May I say this, Mr. Chairman, so that my position is clear——

The CHAIRMAN. You said you had no comment.

Senator McCARTHY. I have no animosity toward Senator Hendrickson at this time. I like him. I think he is a friend of mine.

Senator CASE. Just one further question, Mr. Chairman.

The CHAIRMAN. Senator Case.

Senator CASE. I think this is competent: Senator McCarthy, were you present on the floor of the Senate the afternoon that a very large number of Members of the Senate paid tribute to Senator Hendrickson in connection with his prospective retirement from the Senate?

Mr. WILLIAMS. I think this question is designed to do exactly the same thing as the previous question was designed to do. It is designed to create an embarrassing situation on a matter that is wholly irrelevant.

Senator CASE. Mr. Chairman, it isn't designed to create an embarrassing situation. It is designed to create a record that——

Mr. WILLIAMS. I think you know the position I have taken on this, Senator Case, and I can't believe that you are trying to help us now.

The CHAIRMAN. Well, whether he is trying to help you or not, the Senator has the right to try to get the——

Senator CASE. I am trying——

The CHAIRMAN. Trying to get the record straight now.

As I say, the Chair and the other members of the committee——

Senator MCCARTHY. I was not present.

The CHAIRMAN. Just a moment, so I may make this statement.

The Chair and the other members of the committee not asking the question are confronted with this situation: That it is very difficult to say what any member of the committee may ask about.

My opinion is—my own personal opinion is—you are probably right, as a matter of law.

Now, it is up to Senator Case, if he wants to press for an answer. I do not know whether he does or not.

Senator MCCARTHY. I will be very glad to answer the question.

The CHAIRMAN. Just a moment. Your counsel goes one way, and you, the other.

Mr. WILLIAMS. Senator McCarthy tells me he was not present, so the whole thing becomes moot.

Senator MCCARTHY. I will be glad to answer that question, now.

The CHAIRMAN. Then, Senator Case, do you want it answered? Do you want it answered in view of what I have just said?

Senator CASE. I do not care particularly, except I do want to state very frankly and sincerely to counsel for the defense that my question was not prejudicial against Senator McCarthy, and not intended to be.

I was intending—I do not know whether this is proper for me to say, but I would like to say this—for a separate congressional hearing—for a senatorial hearing.

Senator MCCARTHY. Yes.

The CHAIRMAN. If it is applicable to any Senator, we will have to watch our steps.

Senator MCCARTHY. May I answer that question which was asked by Senator Case? I will answer first, "No"; and I would like to give you my position, if I may. I would like to give you my position, and it is this, that when you are discussing a Senator off the floor of the Senate, you are in an entirely different position than when discussing him on the floor. You can say what you think about a man; you have got freedom of speech.

I was greatly disturbed by what I thought was a most unusual Senate report, the most unusual Senate report I have ever seen, based

on rumor, and statements based on hearsay, that "McCarthy may have performed this illegal act; we have got no evidence that he did."

And then, when I heard Senator Hennings say "I have not read the report, but I signed it; but I disagree, insofar as it does not conform to the facts," I felt that I was justified in making the statement that I did. I do think we have free speech, regardless of whether it involves a Senator.

Senator CASE. Mr. Chairman, the question was not intended to elicit the statement that the counsel has implied. The question was intended to show the importance of having any statement that Senator McCarthy might make, with reference to his attitude toward Senator Hendrickson's position in the record, in the most favorable light that it could be, to Senator McCarthy, when this record goes before the Senate and into the atmosphere of the Senate, that might have been reflected by statements that were made on the basis of which I relied. I am seeking to give Senator McCarthy an opportunity to have the best statement that he wanted to make, in the light of the evidence adduced in this hearing.

The CHAIRMAN. Are there any further questions? Senator Case? Senator CASE. No.

The CHAIRMAN. Does any other Senator have a question?

Senator STENNIS. Mr. Chairman.

The CHAIRMAN. Senator Stennis.

Senator STENNIS. Before this closes, I want to ask the Chair one question here.

Does the record show the meaning of these various classification marks or stamps that may be placed on different documents? I think Senator McCarthy handed up something on that to the Chair, just before recess.

The CHAIRMAN. That was in reference about the so-called classified documents, and so on.

Senator STENNIS. What I am interested in is the record showing these different classification marks, and just what they mean, particularly from the FBI, and whether or not those marks have had their meanings changed, or whether a different mark has been used for higher priority and second priority and third priority.

Senator MCCARTHY. May I answer that?

Senator STENNIS. I want to know just what the record shows, and I think it ought to be in the record now, indisputably.

Mr. WILLIAMS. It is very simple.

The CHAIRMAN. I will permit Mr. Chadwick to make a brief statement on that.

Mr. CHADWICK. I call the Senator's attention to the fact that that was the subject of questions in the Mundt subcommittee, extended in the record of this committee by reference and judicial notice of the facts. At the time these documents were dated, the highest classification that the FBI used "Confidential" or "Personal and Confidential," and that other classifications were technical. I have forgotten it all now. They were adopted by different departments subsequently. But there is no question that the language, the words which seem to appear on these documents, under the testimony in that case, are the highest classification that Mr. Hoover could place upon them.

Senator STENNIS. That is the basis, then, for a question I want to ask Senator McCarthy.

Senator McCARTHY. Could I first, Senator, correct Mr. Chadwick?

Senator STENNIS. Surely.

Senator McCARTHY. A stamp, stamped on the document, "Confidential," made the highest classification. However, there will be testimony here by one of the witnesses not called by me—there will be testimony here by a witness not called by me, but by the Chair—to the effect that, while he was in the FBI, he received innumerable letters marked "Personal and Confidential," typewritten on them; and that was never considered to be classified.

That was just the same as though I was to write you a personal letter. However, if it is to be classified as "confidential," then there is the stamp placed upon the document. There is no evidence that there was any such stamp placed upon this document; and that makes a big difference.

Senator STENNIS. It has been frequently said here that this so-called two-and-a-quarter-page document had the highest classification that the FBI gives to any document. So your position is that it did not have that classification, and was not so marked?

Senator McCARTHY. That it had no classification—was not classified—had nothing on it to indicate that it was classified.

Senator STENNIS. And your position is that the words "personal and confidential" on that document meant no more than a letter from Mr. A would mean, marked "personal and confidential"?

Senator McCARTHY. Right; no more than as though you write me a letter saying "This is personal and confidential." If it is to be classified, there would be the classification stamp stamped upon the document.

Senator STENNIS. So this letter purported to be a letter from the FBI to the General whose name I do not readily recall?

Senator McCARTHY. General Bolling.

Senator STENNIS. It was General Bolling, and it was marked "personal and confidential," and still you did not think that that meant it had any kind of classification?

Senator McCARTHY. No, I did not. And may I say, Senator Stennis, that even if I thought the original document had a classification—which it undoubtedly did have—the original document undoubtedly had a classification—once the security information was removed, I strongly felt that I had no choice, when this officer gave me the dates of other like documents—did not give me the documents, but gave me the dates—all along the same line, warning of the exploratory or "top secret" laboratory, I felt that I, as chairman of the Government Operations Committee, did not take action, that might mean that many Americans would die because of that, and that I had the duty to ferret out the Communists. We did that. They have been removed since we started our activity.

Senator STENNIS. My inquiry, here, now, though, is just this: What meaning did those words "personal and confidential" carry to you, with reference to this being a classified document?

Senator McCARTHY. No more than if I received a letter from you saying "personal and confidential."

Senator STENNIS. All right.

Mr. Chairman, the other points that I had in mind have already been covered here, either on cross-examination or on direct examination. I have no other questions.

The CHAIRMAN. Senator Carlson, have you any questions?

Senator CARLSON. No, Mr. Chairman, I believe not.

Senator McCARTHY. Senator Stennis, may I point out that the letter, on its face, showed that all of the security information had been eliminated, so that while it may have been properly stamped, in the first place, the document which was apparently in the Army files bore no classification.

Senator STENNIS. Well, you say it showed on its face that it had the security information eliminated. Now, there were no markings on there to indicate that—you just concluded that, from looking at the document; is that correct?

Senator McCARTHY. Yes, there was information. For example, paragraph 5—you may recall the document. I have it in my mind's eye—paragraph 5 showed that the information in regard to a certain individual was all eliminated, and then, before the names of the individuals, who were working at Fort Monmouth, there was the indication that there had been security information, which had been eliminated. There was an evaluation, so you could see by looking at the document that the names of informants in investigative technique, and so forth, of the bureau are no longer in the letter.

Senator STENNIS. Well, Senator, one more question.

I noticed this morning you referred to that document as an Army document.

Senator McCARTHY. That is right.

Senator STENNIS. You call it an Army document, even though it was signed, or purported to be signed, by Mr. Hoover, of the FBI?

Senator McCARTHY. Yes. I think, once someone in the Army evaluated the security information, deleted that information, and put it in their files, and did not stamp it with a classification, I think it then became an Army document, and was no longer an FBI document.

Senator STENNIS. That is all. Thank you.

Mr. CHADWICK. I would like to supplement my answer to Senator Stennis, to this effect. To the best of my knowledge and belief, there is no evidence in the record that anything more is necessary to mark these documents classified than the words which appeared upon them; that, since they were dealt with during the Mundt hearing, both Mr. Hoover and the Attorney General of the United States—

Mr. WILLIAMS. I do not think this is proper, Mr. Chairman, as to what Mr. Hoover or Mr. Brownell did thereafter. This has been gone into frequently with respect to matters classified in the Army classified hearings, but that does not have any relevancy here—Mr. Hoover, I understand from the evidence, did not seem to be clear on that—matters classified in 1953.

The CHAIRMAN. It was called forth by an explanation. The inquiry was directed to the Chairman by Senator Stennis.

Senator STENNIS. Yes.

The CHAIRMAN. And, as a result, I had to make the explanation. I think we are just arguing about something that is already in the record, and, if we go into it, obviously we cannot bring the document out and compare it, and all that sort of thing, so—

Senator STENNIS. Mr. Chairman, I did not want to bring up anything to argue about. I simply wanted the record to reflect the meanings, whatever the meanings are, and so that there may be an opportunity of knowing what the contention is.

The CHAIRMAN. Our reference is to our own counsel, and the counsel of Senator McCarthy. Maybe we should not still argue. I think we can stop it, right here. But the evidence is here before us, and I am not reflecting on either of the gentlemen, but the quickest and easiest way to handle that is to say we will go to the record—and there it is.

Senator McCARTHY. There will be testimony on this point, Mr. Chairman.

The CHAIRMAN. I have 1 or 2 questions that I wanted to ask, with reference to your position, since the subject has been raised by Senator Case and Senator Stennis. It is in respect to the statements made outside the Senate Chamber, itself, when it was in session, by some Members of the Senate about other Members of the Senate, or about some committees of the Senate.

Now, I think you have made your position clear, that you think it is right for any Senator to comment, in almost any language he may desire, or that he may use, on the distant scene, as long as it is not made on the floor of the Senate. Am I right on that?

Senator McCARTHY. The right not only of a Senator, but of any of our constituents.

The CHAIRMAN. All right; but we are talking about Senators now, and the Senators are not the only ones who have a right to discipline a Senator for anything he does on the floor of the Senate, off the floor of the Senate, if it reflects upon the Senate. I say the Senate itself is to be the sole judge of the qualifications of the Members of the Senate.

Since that is the case, now, I want to ask this question, in respect to your position on the letters that you wrote to the chairman or chairmen of the subcommittee on Privileges and Elections of the Rules Committee of the Senate; and you regard the fact to be that your right, there, to say what you please would be about the same as it would be to make remarks about any individual Senator, so long as they were not made on the floor of the Senate?

Senator McCARTHY. Yes, Mr. Chairman. I feel that a Senator has not only a right, but a duty, to call attention to wrongdoing on the part of Senators, if he feels that they are in the wrong. You and I might disagree about whether or not the committee was right or wrong.

But I strongly felt, as I wrote, that I had to call it to the attention of the American people. There is no law which denies me the right to do that. If it were done on the floor of the Senate, then I could be set down, as the rules provide; but there are no rules or regulations that provide that a Senator cannot say what he thinks about what he considers wrongdoing; and I am not asking you to decide whether the committee was in the wrong or in the right, but take my word for it, I felt very strongly, and I feel now that they were completely in error. I said exactly what I thought; I think I would be derelict in the performance of my duties if I did not do it.

The CHAIRMAN. Well, what I started with—your position, then, is that you had a perfect right—not only a right, but a duty, to express what you thought about them.

Senator McCARTHY. Right.

The CHAIRMAN. Even though you were not on the floor of the Senate?

Senator McCARTHY. Right.

The CHAIRMAN. I think that covers the question I raise. I wanted to be sure that I got your position, if I did nothing other than to clear up the argument. So that is all.

Mr. WILLIAMS. Mr. Chairman, I anticipated that there might be some questions with respect to this "on the floor, off the floor" matter, and I prepared a memorandum which I will submit to the committee on this subject.

The CHAIRMAN. I will be very glad to have it, because it is so very easy, I think, and probably for the first time, on a set of facts that I have not heard before in connection with this history of the Senate.

I think it is one of the most important questions raised, and that is the reason I wanted to be sure we had Senator McCarthy's view on it. It will be helpful to the Senate, and helpful to us to know just where he stands in the light of the letters and in making the statements to the Senators.

Senator McCARTHY. May I say, Mr. Chairman, that people, including Senators, have said some very uncomplimentary things about me. I have never felt that they should be censured.

I think that every Senator should have a right to say anything about any—

The CHAIRMAN. As long as they are provoked.

Senator ERVIN. Mr. Chairman.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. There is one question which was brought to my mind by Senator Stennis' questions and the answers of Senator McCarthy.

Senator McCarthy, I understand your position is this: that this purported letter that we have been talking about was not a classified document.

Is it your position that the information contained in that purported letter was not classified information?

Senator McCARTHY. It was not classified until Herb Brownell classified it during the McCarthy hearings.

Now, whether he had the right to classify it at that time, or not, I do not know.

My position is that it was not classified from the time I received it until the time that Brownell either classified it or attempted to classify it.

Senator ERVIN. I will ask you this question, Senator: Did you not make a distinction between information relating to the national defense and information which is merely classified?

Senator McCARTHY. I am not sure that I understand that.

Yes; I think I do now.

If the document disclosed atomic-bomb secrets, defense secrets, in other words, how we will defend ourselves in case of invasion, things like that, certainly it would be a violation of the Espionage Act to use that.

However, keeping in mind here, Senator, that we are not dealing with that, we are dealing with what I consider a warning that there was a dangerous situation at a key defense installation and I felt I had to act upon it.

Senator ERVIN. Did you not consider information to that effect to be information relating to the national defense, regardless of whether or not it was classified information?

Senator McCARTHY. It showed that our national defense was in grave danger because of the enemy's infiltration.

To that extent, yes; and to that extent we had to look into it.

It did not disclose any secrets of our national defense of any kind, and you have seen the letter, and you know that.

Senator ERVIN. Of course a document becomes a classified document merely because some department, some official so designates it. But information which relates to national defense in and of itself denoting its true nature, regardless of whether some official stamped something on that document containing such information; is that not so?

Senator McCARTHY. I think you could tell from examining a document whether or not it should be classified by observing the rules covering secret, top secret, and confidential material.

This document, as you all know, because you saw it, merely points out that there was a dangerous situation at Fort Monmouth, and I might add to that, that it is important to keep in mind also that the testimony before the Army Committee was that there were some 5 or 6 other like documents, so that this was not an isolated document.

Senator ERVIN. The only point I am trying to bring out in trying to understand your position in this: Do you contend that the information contained in this so-called letter does or does not relate to national defense?

Senator McCARTHY. It relates to the national defense in this respect in that it shows that our national defense was being endangered by possible subversion.

Senator ERVIN. That is all, Mr. Chairman.

The CHAIRMAN. Are there any further questions?

If there are no further questions, we will call the next witness.

Mr. DE FURIA. We desire to call General Lawton, Mr. Chairman.

The CHAIRMAN. You may be seated, General. You have heretofore been sworn.

TESTIMONY OF MAJ. GEN. KIRKE B. LAWTON—Recalled

The CHAIRMAN. You were previously sworn by the Chair?

General LAWTON. Yes, sir.

The CHAIRMAN. And as the Chair recalls, you were excused after you stated that you could not relate the conversation which you had with General Zwicker.

The committee, as I think the record will show, expressed by the Chair, the committee was not satisfied with that situation even though there had been no request by counsel for Senator McCarthy for an order ordering you to go on with that conversation, notwithstanding the objection that was raised.

Since that time, you were excused temporarily and since that time the committee, through its chairman and upon the authorization of the committee, has contacted the Department of Defense and it has received a letter with respect to the matter of your testimony and possible testimony of General Zwicker.

At this point, I think the record should show a copy of this letter, so it will be placed in the record. I will read it myself. The letter is as follows:

THE SECRETARY OF DEFENSE,
Washington, D. C., September 10, 1954.

HON. ARTHUR V. WATKINS,
United States Senate,
Washington, D. C.

DEAR SENATOR WATKINS: It is the policy of the Department of Defense to cooperate fully and completely with all the committees of the Congress. Under this policy it was never intended by the Department to limit the testimony of Generals Lawton and Zwicker except insofar as limitations are inherent in the Presidential order of May 17, 1954.

As a matter of legal application, the Attorney General advises me that the principles of the Presidential order of May 17, 1954, are as completely applicable to any committee as they were to the Committee on Government Operations. However, at your request and for the purpose of clearing up any possible misunderstanding about the limitations on the testimony of Generals Lawton and Zwicker in the present hearing before the special committee of the Senate, of which you are the chairman, the Department of Defense will encourage these two witnesses to testify to any matters properly before your committee that are not clearly prohibited by security regulations or the Presidential order of May 17, 1954.

I understand the Senate has authorized your committee to request witnesses to produce such correspondence, books, papers, and documents as may be pertinent to the present hearing. Generals Lawton and Zwicker will be prepared to produce any such documents unless the production of them would clearly be a violation of national security regulations or a violation of the President's order of May 17, 1954, which in part reads as follows:

"Because it is essential to efficient and effective administration that employees of the executive branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations or communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the subcommittee of the Senate Committee on Government Operations regarding the inquiry now before it that they are not to testify to any such conversations or communications or to produce any such documents or reproductions. This principle must be maintained regardless of who would be benefited by such disclosures."

Testimony regarding facts, and action documents in regard to orders, actions, and similar matters not directly affecting national security and not dealing with conversations, communications, and letters affecting policy and reasoning back of the actions in many cases are not prohibited by the forementioned Presidential order.

Generals Lawton and Zwicker are being so advised. This was the intent of the advice previously given by General Counsel Brucker to General Lawton when he was advised that his retirement status did not change his responsibility under the Presidential order.

The full text of this letter will be furnished personally to Generals Lawton and Zwicker for their guidance.

Sincerely,

C. E. WILSON.

The CHAIRMAN. C. E. Wilson, of course, is the Secretary of Defense, with whom I conferred and presented the request of the committee.

Now, Mr. de Furia will examine this witness, and I take it that you are now fully supplied with the information contained in this letter that I have just read, that you have had a copy of it and your counsel.

General LAWTON. Yes, sir.

The CHAIRMAN. So, counsel will now examine you with respect to the matter which you stated you could not testify to the other day.

Proceed, Mr. de Furia.

Mr. DE FURIA. General Lawton, I think we already have in the record your full name, address, and position; is that correct?

General LAWTON. That's correct.

Mr. DE FURIA. How long have you known General Zwicker, sir?

General LAWTON. Since November or December 1953.

Mr. DE FURIA. On what day did you first meet General Zwicker?

General LAWTON. Sometime in November, early December 1953.

Mr. DE FURIA. And where, sir?

General LAWTON. Camp Kilmer, N. J.

Mr. DE FURIA. Were you on duty at that time?

General LAWTON. At Fort Monmouth, N. J., I was on duty.

Mr. DE FURIA. In what capacity?

General LAWTON. Commanding general of the post.

Mr. DE FURIA. In what capacity was General Zwicker on duty at Camp Kilmer?

General LAWTON. He was commanding general at Camp Kilmer.

Mr. DE FURIA. I take it you went to Camp Kilmer for some purpose or other; is that right?

General LAWTON. That's correct.

Mr. DE FURIA. Without telling me what was the substance or subject of the conversation, did you have a conversation with General Zwicker at about the time indicated, in which the name of Senator McCarthy was mentioned?

I want just a yes-or-no answer, if I can get it.

General LAWTON. Yes.

Mr. DE FURIA. You did?

General LAWTON. Yes.

Mr. DE FURIA. Do you remember, General, any of the exact words you used in the conversation with reference to Senator McCarthy?

General LAWTON. I remember many of my own, some of General Zwicker's which was on classified matter.

Mr. DE FURIA. I didn't quite get that.

General LAWTON. Which was on classified matter.

Mr. DE FURIA. Unclassified?

General LAWTON. On classified matter.

Mr. DE FURIA. On a classified matter?

General LAWTON. We had a conversation on classified matters.

That is not to infer that that is all we had.

Mr. DE FURIA. Do you remember specifically any of the words used by General Zwicker with reference to Senator McCarthy?

All I am asking for here is a yes-or-no answer.

General LAWTON. No.

Mr. DE FURIA. You do not?

Then do I understand, sir, that independent of any Presidential, Executive, or Army order, you could not testify with any accuracy to any of the words used by General Zwicker; is that correct, with reference to Senator McCarthy?

General LAWTON. I could not.

Mr. DE FURIA. If you were asked, and if you were permitted to answer, could you give a conclusion or personal impression about General Zwicker's reference to Senator McCarthy?

General LAWTON. I could.

Mr. DE FURIA. That is all the questions we have, Mr. Chairman.

MR. WILLIAMS. Would you read the last question, Mr. de Furia, or would you restate it? I must have misunderstood it.

MR. DE FURIA. As I understood it, Mr. Williams, this witness could only give us conclusions, which is incompetent in any judicial procedure or court of law. He states he cannot remember any of the words used by General Zwicker, and we wanted to make the point clear that he has not been gagged by any order of the Army or the President or anyone else; he just does not have any legal evidence which he frankly told us that he could give here or elsewhere.

MR. WILLIAMS. Well, I am glad you have said that, because I think now we have reached the milk of the coconut, Mr. de Furia. I do say this witness is being gagged by an Army order. I think it is perfectly clear.

THE CHAIRMAN. Wait and let us see if he is.

MR. WILLIAMS. From this letter of September 10, 1954—I have just been handed a copy of it today—I have read it over and I am frank to say to you that I don't understand its reading. In the letter, General Lawton is told that the order of May 17, 1954, which at the time it was issued applied only to the Army-McCarthy hearings, is made applicable to him in this hearing. That was the thing upon which we drew issue when he came here last.

I stated I couldn't understand how he could be bound by this order, or how anyone could have given him competent evidence in good faith that he was bound by this order, since this order obviously and manifestly applied only to the Army-McCarthy hearings.

Now, Mr. de Furia has called him back here, and he now has in his hands a letter telling him that he is bound by this order, and that he may not testify to any of the things within the purview of this order of May 17, 1954.

Now, if this order simply states principles of general legal application, as the Secretary says in his letter of September 10, 1954, then there was absolutely no reason to issue it specifically for the Army-McCarthy hearings. So there must have been a reason to issue it at that time.

Now, we find first of all that General Lawton comes here, and we find that he had advice that he could not testify because this order was applicable. When it became manifestly absurd to hold that contention—and no lawyer who reads the order could believe that this particular order was applicable—then he was excused because we would not force him to testify in the teeth of Army regulation when he is living as a retired general.

Now he comes back here, but there is now in his hands a letter from the Secretary not giving him just a legal opinion that the order is applicable, but making it applicable to this proceeding. So that I don't know, I would like to ask him the question, but I am afraid I cannot get the answer.

THE CHAIRMAN. As I understand it now, from what you have said, General, that you are willing to testify in this proceeding as to anything General Zwicker may have said at that conversation with respect to Senator McCarthy—that is, providing you could remember the specific statements. You are not objecting now to testifying about what he said about Senator McCarthy, are you?

General LAWTON. I am not.

The CHAIRMAN. You are willing to go as far as you can within the range of your memory?

General LAWTON. That's right.

The CHAIRMAN. That is what you asked for the other day, so you may proceed with your question.

Mr. WILLIAMS. All right, General, on December 1953, as I understand it, you had a conversation, sir, with General Zwicker at Camp Kilmer.

General LAWTON. That's correct.

Mr. WILLIAMS. And that conversation took place, as I understand it, in General Zwicker's office.

General LAWTON. Correct.

Mr. WILLIAMS. Would you tell the committee what the substance of that conversation was? I understand from Mr. de Furia's question that you cannot give the exact quotes but can you tell us the substance of the conversation?

The CHAIRMAN. This is with respect to Senator McCarthy.

General LAWTON. The conversation with respect to Senator McCarthy revolved around a classified, a classified subject or classified subjects, classified conversations. Therefore, I cannot tell you the discussion between General Zwicker and myself on this classified matter.

Mr. WILLIAMS. General, is it your opinion, as the result of the advice you received from counsel, that you cannot segregate what you regard as classified from that which you regard as unclassified?

General LAWTON. No, I can segregate it.

Mr. WILLIAMS. Will you tell us the substance of the conversation that you had with General Zwicker on the subject of Senator McCarthy?

General LAWTON. It was all classified.

Mr. WILLIAMS. General, you came a long way back for nothing; didn't you?

General LAWTON. That's right.

Mr. WILLIAMS. You came back from New Jersey last night?

General LAWTON. That's right.

The CHAIRMAN. Let's see.

The committee is very much interested in getting this information. Let's see if he came a long way back for nothing.

Does counsel wish to give his name, please?

Mr. PERNICE. My name is John Pernice.

May I say just a word to explain that last statement of the General's?

The CHAIRMAN. Without objection.

Mr. PERNICE. I believe the General is of the opinion that it has been held that his inferences and conclusions from the conversation are barred by this committee, by the chairman. Therefore, his answer is not as roundabout as it would appear.

In other words, he feels that some portions of the conversation did relate to national security and therefore are barred. Other portions of the conversation he cannot recall the specific words and he is of the thought right now that this committee does not want to hear his conclusions and opinions. He is prepared to give his conclusions and/or his opinions if the committee desires to hear it.

The CHAIRMAN. Well, the committee is interested in getting information, if he has any, about any remark that General Zwicker may have made which was derogatory or critical of Senator McCarthy.

Do I make myself clear?

General LAWTON. Absolutely, but you are the first one that has asked the question, with all due respect.

(Laughter.)

The CHAIRMAN. All right, if you can give us the exact words and not what was said about Senator McCarthy, by General Zwicker, or if you can't give the exact words, if you can give the substance of it, we want to learn that. We want you to tell us.

General LAWTON. I was there for about an half-hour. This was at the time indicated. It was a long time ago. It was a courtesy call, and I honestly cannot tell you one quote that General Zwicker said for or against Senator McCarthy as a result of this conversation.

However, I did form an impression from what was said, and I have made an opinion.

The CHAIRMAN. Now, I am going to rule on this now, and I am going to be liberal in this ruling.

Will you give us that impression?

(At this point General Lawton conferred with Mr. Pernice).

General LAWTON. My impression as a result of this discussion was that General Zwicker was antagonistic toward Senator McCarthy.

The CHAIRMAN. But you cannot give us any of the language on which you base that conclusion?

General LAWTON. Not one quote.

The CHAIRMAN. You may take the witness.

Mr. DE FURIA. We have no questions, sir.

Mr. WILLIAMS. I may take the witness?

The CHAIRMAN. Yes.

Mr. WILLIAMS. Now, General, in this conversation which you have admitted having, you said, in response to one of the questions from the Chair, or Mr. de Furia, that you remembered what you said; is that right?

General LAWTON. That's right.

Mr. WILLIAMS. What did you say?

General LAWTON. What was said about Senator McCarthy was classified.

The CHAIRMAN. And, as a matter of fact, it would not be important, what he said——

Mr. WILLIAMS. Wait a minute.

I object to this. I want to go right in now, if it is going to be characterized. If it is going to be characterized, I think we should have this in.

The CHAIRMAN. Have what in?

He has given everything he remembered.

Mr. WILLIAMS. I understood the Chair said it wouldn't be important.

The CHAIRMAN. No, I did not say——

Mr. WILLIAMS. I think it would be awfully important.

The CHAIRMAN. Would you let me finish my statement?

Mr. WILLIAMS. I am sorry.

The CHAIRMAN. I say it is not so important—let me qualify it that way—it is not so important, what he said to General Zwicker, as it is what General Zwicker said, and he has given his impression.

I have stretched the rules to the very limit.

Now, I think it is only fair to Senator McCarthy that we do that.

Mr. WILLIAMS. Can you tell us, General, what General Zwicker said in that conversation?

General LAWTON. No, I can't honestly repeat that.

Mr. WILLIAMS. You can't tell us?

General LAWTON. If you are asking why I formed this impression, I don't remember the quote. I can give you—

Mr. WILLIAMS. We are not asking you for quotes. I know that no man can remember a conversation a year ago in quotes, unless there is some reason why it should make a very vivid impression on his mind, and I assume this wasn't that kind of conversation. So, I am not asking you to give us quotes. So don't say, "No, I won't give it to you because I can't remember quotes."

I am asking you, sir, if you will tell us what the substance of the remarks were.

The CHAIRMAN. That is about Senator McCarthy.

General LAWTON. Wait a minute.

(At this point General Lawton conferred with Mr. Pernice.)

General LAWTON. Maybe I can give you this answer indirectly.

I had been before the McCarthy committee hearings under oath twice. I had been, by invitation, attending five other times when the employees of Fort Monmouth were there on interrogation. These were closed sessions.

In this discussion, feeling this antagonism that I felt from General Zwicker, I tried to explain—I did explain—to him, and tried to convince him that what I had seen and heard myself as a result of these 7 days or nights, or combinations, that I didn't think the attitude was proper.

Mr. WILLIAMS. What attitude?

General LAWTON. The attitude of being antagonistic against the Senator, McCarthy.

Mr. WILLIAMS. Did you tell him these things after he had expressed his antagonism toward Senator McCarthy?

General LAWTON. No. I wouldn't say there was any before or after. I would say after I had left his office that was the impression I had as a result of our conversation.

Mr. WILLIAMS. This was 3 months before General Zwicker's appearance on the stand in New York; is that right?

General LAWTON. December, January—yes; he was there about—I don't know—February—that's about right; 3 months.

The CHAIRMAN. Three weeks or months?

General LAWTON. Three months.

Mr. WILLIAMS. Did you tell General Zwicker in that conversation that you had with him about your experience with security risks insofar as the Pentagon was concerned before the investigation of the subcommittee?

General LAWTON. Wait a minute. These—the subcommittee—of who? Me, Fort Monmouth, or—

Mr. WILLIAMS. Fort Monmouth.

General LAWTON. Now, I am confused. Say that over.

Mr. WILLIAMS. I say: Did you tell General Zwicker your experience in dealing with security risks at Fort Monmouth insofar as the Pentagon was concerned before the subcommittee conducted the investigation at Fort Monmouth?

General LAWTON. No. This was subsequent.

Mr. WILLIAMS. In the conversation, General, that you had with General Zwicker, did you tell him in December of 1953 about the experience that you had had in dealing with security risks at Fort Monmouth before the subcommittee conducted its investigation at Monmouth?

Did you discuss that with him?

(At this point, General Lawton conferred with Mr. Pernice.)

General LAWTON. I discussed with General Zwicker security problems at Fort Monmouth—period.

Mr. WILLIAMS. Did you discuss them in relationship to the McCarthy committee?

General LAWTON. Yes, sir.

Mr. WILLIAMS. And did you tell him that this was the first luck that you had had in getting rid of the security risks that had been around there a number of years, that prior to that time there had been no action by the Pentagon?

The CHAIRMAN. The witness is shaking his head.

Will you make an audible answer?

General LAWTON. Yes, I will, when I figure out what I should say, but this is getting in this ground now—I am going to cut the line on you. I already said under oath once at another time.

Mr. WILLIAMS. What did you say under oath?

The CHAIRMAN. Just a moment.

General LAWTON. No. That is classified.

The CHAIRMAN. I was——

Mr. WILLIAMS. How did you say it before that was classified?

General LAWTON. It was before the Senator's classified executive hearing, which he has not yet released; probably never will.

Mr. WILLIAMS. Will you testify to us in executive session?

General LAWTON. I will to the Senator here, I think, if he wants to satisfy me it is a classified hearing. I might have to go back to the Pentagon and get a ruling on it.

The CHAIRMAN. Well, as I understand, the matter is directed more to me, I take it, from what the witness just said. As I understand the order, or I mean the letter, of Secretary Wilson, you were directed to give any information that would not deal strictly with classified or security matters, and this matter of what General Zwicker said about McCarthy, personally, his activities, would not be classified. As I understand it, they would not be classified. You would be permitted to tell what you know about that.

General LAWTON. I have.

The CHAIRMAN. And you have?

General LAWTON. I have, yes, sir.

The CHAIRMAN. Well, that is as far as I can go.

Mr. PERNICE. Mr. Chairman, may I have another word? I realize I am imposing on this committee, but this witness is in a little bit of a box, in that he is trying to answer as many questions as possible, and there will come a point, though, at which he must stop and take

notice of the fact that the question, the last question asked, will bring him into the area of divulging national security information, which he will not do; and it is because of that that a little bit of embarrassment may arise along the way.

He is going to answer as many questions as he possibly can and bring it right up to the line; but when it gets to the line, he is going to stop.

General LAWTON. May I go on further?

There is a security regulation—not part of this directive, but a routine directive—that we will not give the number of security cases. This means employees. We will not give the status of the case.

Now, the cases run through eight different headquarters before they come to their completion. He is asking me if I had trouble with the Pentagon. Now, that is one of the offices through which the cases go, and it shows the status of the case, and therefore, because of these regulations I must not show the status or the action taken in the immediate offices, I have to, from that regulation, decline to answer his question: Was I having trouble, first, with the Army at Governors Island, my boss, the chief signal officer, or other places at the Pentagon?

I cannot reply to that because of that.

Senator ERVIN. Mr. Chairman.

Mr. WILLIAMS. I am not asking you whether you were having trouble somewhere.

The CHAIRMAN. That is not pertinent to this hearing, anyway, whether you were having trouble.

Senator ERVIN. Mr. Chairman.

Mr. WILLIAMS. I am asking you what you told General Zwicker.

Senator ERVIN. Mr. Chairman.

General LAWTON. What I told General Zwicker would be telling the status of some of these cases, and a lot of other things that I am prohibited from discussing.

Mr. DE FURIA. Senator Ervin——

The CHAIRMAN. Just a moment. Senator Ervin has asked for recognition.

Senator ERVIN. Mr. Chairman, I just want to raise the point of what we are trying here is merely the question of what was the attitude of General Zwicker toward Senator McCarthy in connection with the hearing he had. We have no power, under the resolution or the motion to go into these other matters, and what General Lawton may have said to General Zwicker about other matters would be immaterial.

Mr. WILLIAMS. Do you regard, General, the things that you told me in relationship to that conversation as being within the order since last Monday?

General LAWTON. Since that applied—this order which I thought was specifically for the Senator Mundt committee, and not only interpreted to be this—then I was out of order in telling you what I did.

Mr. WILLIAMS. So all you can tell us is that as a result of this conversation you came away feeling that Zwicker was hostile to Senator McCarthy.

General LAWTON. I used the word “antagonistic.” You could use several others.

Mr. WILLIAMS. How long did this conversation last? Half an hour?

General LAWTON. Oh, half an hour; half of which was spent on security cases and Senator McCarthy's committee.

Mr. WILLIAMS. Without getting into the actual cases that you discussed, which I have no desire to do, did your conversation turn around the work of the McCarthy committee, at Fort Monmouth, in getting rid of security risks?

General LAWTON. It did by me; yes, sir.

Mr. WILLIAMS. Did you tell this to General Zwicker, tell about this work?

General LAWTON. Yes, sir.

Mr. WILLIAMS. When you finished telling about this work, was Zwicker's attitude the same as it had been, as you termed it, antagonistic?

General LAWTON. I previously said, and I don't think that I formed any particular opinion at any particular moment. I am willing to say that when I did leave that I got the impression from the conversation back and forth that he was antagonistic.

Mr. WILLIAMS. And that was the impression that you had, and pointed out what conversation?

General LAWTON. Not necessarily. I don't know where to begin to pick up.

Mr. WILLIAMS. At the end; is that right?

General LAWTON. I am sure of it at the end.

Obviously, it had to pick up somewhere during the conversation.

Mr. WILLIAMS. I think that is all. That is all I can ask him within the Army—

The CHAIRMAN. Is that all you had?

Senator Case, did you have a question?

Mr. WILLIAMS. Excuse me, if I may finish, sir.

The CHAIRMAN. I beg your pardon.

Mr. WILLIAMS. That is all that I may ask, as I understand, within the Army counsel who has accompanied General Lawton's interpretation of this order, and that is why I am desisting from any further examination.

Senator CASE. General Lawton, I think you have given some testimony here that may be helpful to the committee this afternoon.

In order that we be perfectly clear, I want to ask you one question:

Did I correctly understand you to say that the number and status of security suspects in a defense installation is classified information?

General LAWTON. Yes, sir; and may I add to that that if it is requested by a body of Congress, you then put your request into writing and we will take it to the Secretary of the Army, who will make such reply as he deems appropriate to your questions.

But we within the Army or at a lower level than the Secretary, himself, cannot divulge that information.

Senator CASE. Thank you. That is all.

The CHAIRMAN. Thank you, General; you are excused.

General LAWTON. You mean momentarily?

The CHAIRMAN. Did you ask momentarily, or do you mean permanently?

General LAWTON. Permanently; yes, sir.

The CHAIRMAN. That depends on what develops.

Let me ask Senator McCarthy and his counsel:

Do you expect to use the General any further?

Mr. WILLIAMS. Only if the Army changes its order again.

The CHAIRMAN. Well, they will have to go pretty quickly because we hope to end this hearing Monday.

You are excused.

Thank you, General.

The CHAIRMAN. The committee will call Mr. Roy Cohn.

Do you solemnly swear that the testimony you will give in the matter now pending before the committee, will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. COHN. I do.

TESTIMONY OF ROY COHN

Mr. DE FURIA. Will you state your name, please?

Mr. COHN. Roy Cohn.

Mr. DE FURIA. What is your address, Mr. Cohn?

Mr. COHN. 1165 Park Avenue, New York City.

Mr. DE FURIA. At one time, I believe you were chief counsel for the committee of Senator McCarthy, the Permanent Subcommittee on Investigation; is that right, sir?

Mr. COHN. Yes, sir.

Mr. DE FURIA. You served in that capacity, did you not, Mr. Cohn, during the Army-McCarthy hearings?

Mr. COHN. Yes, sir.

Mr. DE FURIA. Do you remember Senator McCarthy, in the course of this hearing to which I have just referred, the Army-McCarthy hearing, presenting a 2¼-page paper?

Mr. COHN. Yes, sir.

Mr. DE FURIA. By that general description, I take it you know what we are talking about; is that right, sir?

Mr. COHN. Yes, sir.

Mr. DE FURIA. When did you first see that paper, Mr. Cohn?

Mr. COHN. I don't recall.

Mr. DE FURIA. About how long before the day on which Senator McCarthy presented it?

Mr. COHN. I don't recall that, Mr. de Furia. I know I was familiar with its contents. Whether I had actually seen the paper first, I probably had, but I have no specific recollection of it.

I knew generally what was in it. I know about the whole situation.

Mr. DE FURIA. Was it in your possession, or Senator McCarthy's possession prior to the presentation of that paper during the course of those hearings?

Mr. COHN. I believe it was in Senator McCarthy's possession.

Mr. DE FURIA. Had you any copies of it made before Senator McCarthy presented it at the hearings?

Mr. COHN. I don't believe so, sir.

Mr. DE FURIA. Can you give us a better statement than that, sir, that you don't believe so?

Mr. COHN. No; I am reasonably sure that I did not. I have no specific recollection of this document, Mr. de Furia, before it came into the Mundt committee hearings.

I knew what was in it, and I knew about the general Fort Monmouth situation, but no particular importance was attached to the

fact that some of the information happened to be in this one piece of paper.

MR. DE FURIA. My question is whether you had had any copies made before Senator McCarthy presented it at this hearing.

MR. COHN. As I told you once before, sir, I don't believe that I did.

MR. DE FURIA. Did you have any copies made after Senator McCarthy mentioned and presented that paper in the Army-McCarthy hearings?

MR. COHN. I believe so.

MR. DE FURIA. How many copies did you have made?

MR. COHN. I don't know. I remember that Mr. Bob Collier of the Mundt committee staff telephoned up to Senator McCarthy's office. He asked for the Senator and the Senator was tied up and I talked to him.

He told me that he wanted us to have—first, he asked for the document and then said could he have a copy made or a couple of copies made, and I think he had an appointment to take one over to the Justice Department and he had something to do with the other one.

I spoke to the Senator and he said that is all right; and I then caused somebody in the Senator's office to make a copy, or two copies, or whatever it was, of this particular document.

Then I left and, I believe, after that Mr. Collier came up and called for whatever he had ordered.

MR. DE FURIA. Were any copies made for the press?

MR. COHN. For the press?

MR. DE FURIA. Yes.

MR. COHN. Not to my knowledge.

MR. DE FURIA. Was a copy made for Mr. Winchell?

MR. COHN. Not to my knowledge.

MR. DE FURIA. Do you know whether any member of the staff of Senator McCarthy made copies for the press or for Mr. Winchell?

MR. COHN. No.

THE CHAIRMAN. The answer is you don't know.

MR. COHN. I don't know, sir.

MR. DE FURIA. That is all the questions we have, Mr. Chairman.

THE CHAIRMAN. I would like to ask one question.

Did you make a copy of that document, give one to Mr. Winchell?

MR. COHN. No.

THE CHAIRMAN. You did not give a copy to Mr. Winchell?

MR. COHN. No.

THE CHAIRMAN. You may examine the witness, Mr. Williams.

MR. WILLIAMS. Mr. Cohn, you said you saw this document in question which now the committee has seen and which Senator McCarthy has seen and which I have seen and which Mr. Ray Jenkins has seen.

I want to ask you what your opinion was when you saw this with respect to whether or not it was a classified document.

THE CHAIRMAN. Just a moment. That is outside the scope of the direct examination.

MR. WILLIAMS. I will make him my witness.

THE CHAIRMAN. All right. It is the committee's witness, in any event, because we do not recognize any distinction here. They all come in here on the subpoena of the committee and they are all committee witnesses.

Mr. COHN. May I answer that question?

The CHAIRMAN. You may answer it. You had better qualify him first.

Mr. WILLIAMS. Yes, sir.

Mr. COHN, have you served in the executive branch of the Government?

Mr. COHN. Yes, I did, for 6 years.

Mr. WILLIAMS. In what capacity did you serve?

Mr. COHN. I was a law clerk in the office of the United States attorney for the Southern District of New York. I was assistant to the United States district attorney. I was the confidential assistant to the United States attorney, and then I became the special assistant to the Attorney General of the United States dealing with subversive activities.

Mr. WILLIAMS. While you served as an assistant United States attorney in the southern district of New York, and while you served as a special assistant in the prosecution of subversive cases, did you have occasion to handle documents of a classified nature?

Mr. COHN. Frequently.

Mr. WILLIAMS. Would you tell us in a very brief way what experience you had?

Senator STENNIS. Mr. Chairman, may I intervene here?

The CHAIRMAN. Senator Stennis.

Senator STENNIS. With your permission, Mr. Williams.

Mr. WILLIAMS. Yes, sir.

Senator STENNIS. Do I understand that this gentleman is to be permitted to give the committee his opinion as to whether or not this document or the contents of it was classified or contained classified material? Is that the proposal here?

Mr. WILLIAMS. The proposal is, Senator, to show through this witness what his experience in dealing with this material is.

Senator STENNIS. I know that is the specific question. I catch that clearly.

Mr. WILLIAMS. And how——

Senator STENNIS. Do you propose to ask him his opinion then as to whether or not this was a classified document or whether or not it contained classified material?

Mr. WILLIAMS. Yes, sir, I intend to ask him——

Senator STENNIS. Mr. Chairman, may I say this, just as one member of the committee: I think and I feel compelled to say this now, that certainly this committee should not—it makes no difference who put this witness on—certainly this is not a place that we should go to get opinions about whether or not this is classified material. I don't care to go into an extended statement on that, or an argument.

The CHAIRMAN. Your question is on the competency of this witness?

Senator STENNIS. Yes, sir. I judge that is what he was leading up to, and I don't want to go into that from this witness.

Mr. WILLIAMS. Senator Stennis, it would be most helpful to the committee if they heard from someone who has had experience with the marking of classified documents, classifying them. I was not going to call Mr. Cohn to evaluate it, to give us his evaluation of what was contained in the document, but I thought it would be most helpful to the committee if he told us the way——

Senator STENNIS. Any light on the marking would be helpful.

Mr. WILLIAMS. That is what I was going to say.

The CHAIRMAN. If you will limit it to that, the Chair will permit you to answer.

Mr. COHN. Based on answering Mr. Williams, and based on my extended experience with FBI documents, it was my opinion and it is my opinion that this document was not classified, and I so advised Senator McCarthy. It did not bear a stamp classification of restricted, confidential, secret, or top secret. It merely bore a typewritten notation of "Personal and Confidential" which is the same as I have used on a number of letters and which I have seen on a number of letters which I have received from people in the executive branch when I was there, and since I have left there, and I did not regard that as having any official significance or connotation and I do not now.

There is an official, formal way of classifying documents. It has invariably, to my experience, been done with a rubber stamp bearing the word "Restricted," "Confidential," "Secret," or "Top Secret" and I have seen FBI documents stamped with whatever classification they may have and the words "Security Information" after it, usually with red stamps.

This letter, I advised Senator McCarthy, on looking at it, was not, to my experience, a classified document.

Mr. WILLIAMS. Had you, while you were assistant United States attorney in New York, and while you were special assistant to the Attorney General in Washington, received FBI letters marked personal and confidential?

Mr. COHN. I believe I had. I am not sure if it was personal and confidential or some were just personal and some just confidential, but I did receive, I am reasonably certain, letters and memoranda bearing those words and I did not regard them as classified unless they had the appropriate rubber marking on them.

Mr. WILLIAMS. Now, do you recall, while you were serving as counsel on the Permanent Investing Committee, whether or not the case of Aaron Coleman had been heard in open session?

Mr. COHN. Yes, sir. I noticed this morning Mr. de Furia had mentioned that the name, Senator McCarthy mentioned the name, Aaron Coleman, as appearing in this document. There had been a suggestion, I believe, by Mr. de Furia, that by being in the document that name was confidential, but the fact is that some months before this document came up in the Mundt committee hearings, Aaron Coleman's name had been very much revealed and he had been called as a witness in both executive session and open session in this very room before this committee.

As a matter of fact, his name had been mentioned in the trial record of the Rosenberg case 2 or 3 years ago.

Mr. WILLIAMS. Had there been publicity incident to the open session on him?

Mr. COHN. Very wide publicity.

Mr. WILLIAMS. That's all.

The CHAIRMAN. Are there any questions?

If not, you are excused.

Senator ERVIN. I would like to ask one.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. Mr. Cohn, I ask you if in fact the act of Congress does not define what classified information is?

Mr. COHN. I think it does, Senator Ervin.

I think that classification to me has always been, as you suggest, sir, a technical matter.

Senator ERVIN. In other words, does not the act of Congress provide in substance that any information is classified information if it is designated and marked by an agency of the Government as being information not intended for general dissemination?

Mr. COHN. My understanding of it, sir, was this, that classification is a technical field; that there is a technical terminology for it. That is why I say, when I see the words "personal and confidential," that means nothing.

Senator ERVIN. When you see a document marked "personal and confidential"—

Mr. COHN. Yes, sir.

Senator ERVIN. Does that not mean to you that it is not intended for general dissemination?

Mr. COHN. It might mean to me, sir, that the person who wrote the letter did not want the thing shown around in various ways or possibly to certain people, but classification to me as an officer in the executive branch, and then later in the legislative, always had a technical significance: Either restricted, confidential, secret, or top secret were the four categories of classification. If a document was to have the legal significance of classification in one of those categories, there was usually a stamp, invariably in my experience, a stamp on each of those documents bearing one of those words in a stamped form; and I never regarded a mere typewritten statement which I myself have put on a number of letters as creating a classification of legal significance.

The CHAIRMAN. Anything further?

Is there a question by any member of the committee?

If not, you are excused.

Mr. COHN. Thank you very much for taking me out of order, Mr. Chairman. I appreciate it.

The CHAIRMAN. The other witnesses whose names were read and who have been subpoenaed will be required to appear here Monday morning at 10 o'clock.

Will the audience remain seated until this committee has actually recessed?

At this stage, the committee will recess now until next Monday morning at 10 o'clock.

(Thereupon, at 3:40 p. m., the committee was recessed, to reconvene at 10 a. m., Monday, September 13, 1954.)

HEARINGS ON SENATE RESOLUTION 301

MONDAY, SEPTEMBER 13, 1954

UNITED STATES SENATE,
SELECT COMMITTEE TO STUDY CENSURE CHARGES
PURSUANT TO SENATE ORDER ON SENATE RESOLUTION 301,
Washington, D. C.

The select committee met, pursuant to recess, at 10:07 a. m., in the caucus room, 318 Senate Office Building, Senator Arthur V. Watkins (chairman) presiding.

Present: Senators Watkins (chairman), Johnson (vice chairman), Carlson, Case, Stennis, and Ervin.

Also present: Senator McCarthy; E. Wallace Chadwick, counsel to the committee; Guy G. de Furia, assistant counsel to the committee; John M. Jex, clerk of the committee; John W. Wellman, staff member; Frank Ginsburg and Ray R. McGuire, members of Senator Watkins' staff on loan to the committee; and Edward Bennett Williams, counsel to Senator McCarthy, with his associates, Agnes A. Neill and Brent Bozell.

The CHAIRMAN. The committee will be in session.

Mr. de Furia, will you call the next witness?

MR. DE FURIA. Mr. Chairman, we desire to call Capt. William J. Woodward, sir.

The CHAIRMAN. Captain Woodward, will you come forward?

Will you raise your right hand and be sworn?

Do you solemnly swear the testimony given in the matter now pending before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Captain WOODWARD. I do.

TESTIMONY OF CAPT. WILLIAM JOHN WOODWARD

MR. DE FURIA. Captain, let us have your full name and address, please.

Captain WOODWARD. Capt. William John Woodward, Quarters 5, Fort Hancock.

MR. DE FURIA. Where are you stationed, Captain?

Captain WOODWARD. I am stationed at the present time at Fort Monmouth, N. J.

MR. DE FURIA. Do you know General Zwicker?

Captain WOODWARD. I do know General Zwicker.

MR. DE FURIA. How long have you known General Zwicker?

Captain WOODWARD. Since the day of the hearing, February 18, 1954.

Mr. DE FURIA. The hearing to which you are referring, Captain, I take it, is the hearing at which General Zwicker was examined by Senator McCarthy in New York?

Captain WOODWARD. That is the date.

Mr. DE FURIA. Did you go to that hearing with General Zwicker?

Captain WOODWARD. I did go to the hearing with General Zwicker.

Mr. DE FURIA. Was that from Camp Kilmer to New York City?

Captain WOODWARD. It was from Camp Kilmer to New York City.

Mr. DE FURIA. What was the state of General Zwicker's health that morning?

Excuse me. You are a medical officer; is that correct, sir?

Captain WOODWARD. That's right, sir.

Mr. DE FURIA. Did you examine General Zwicker before he left for New York?

Captain WOODWARD. Yes, sir.

Mr. DE FURIA. What was the state of the General's health that morning?

Captain WOODWARD. Quite well, sir.

Mr. DE FURIA. He was well. What time did you reach the hearing room in New York?

Captain WOODWARD. We got there shortly before the morning session began. I think we had about 10 minutes to spare.

Mr. DE FURIA. And that was about what time?

Captain WOODWARD. I would say about 9:50.

Mr. DE FURIA. A. m.?

Captain WOODWARD. A. m.

Mr. DE FURIA. And stayed there until when?

Captain WOODWARD. We stayed there until, I think, about 6 p. m.

Mr. DE FURIA. Were you in the company of General Zwicker during that entire period, Captain?

Captain WOODWARD. No, sir, I wasn't. In the morning session I sat approximately 12 rows in front of the general. During the remainder of the day I was at his side.

Mr. DE FURIA. When he testified in the afternoon session, then, I take it you were sitting beside General Zwicker: is that correct, sir?

Captain WOODWARD. I was sitting with General Zwicker.

Mr. DE FURIA. Now, during the course of the testimony, when General Zwicker was under examination by Senator McCarthy, did you hear any mention of the words "fifth amendment"?

Captain WOODWARD. With reference to General Zwicker, sir?

It was mentioned a number of times, mostly concerning the Communist, Peress.

Mr. DE FURIA. Yes.

Captain WOODWARD. On one occasion it was referred to, I feel, the general.

Mr. DE FURIA. What—

Mr. WILLIAMS. Just a minute.

Mr. Chairman, if Mr. de Furia is undertaking to examine this witness as to what was said during the examination of General Zwicker by the committee, I think that this interrogation is improper, because the best evidence of what was said during the examination is the official record that is already in evidence here.

So, I object to going into this when we have the official record here of exactly what was said by Senator McCarthy, the other examiners, and General Zwicker.

Mr. DE FURIA. Mr. Chairman——

The CHAIRMAN. I will hear from the committee counsel as to his objective and what he intends to show.

Mr. DE FURIA. Mr. Chairman, I desire to ask the witness concerning an aside by Senator McCarthy, which was not taken down by the reporter.

The CHAIRMAN. You may answer.

Mr. DE FURIA. Will you tell us, please, Captain, what was the remark about fifth amendment and General Zwicker, who made it, and the exact words, if you can give them to us?

Captain WOODWARD. Sir, I remember that very, very correctly. The statement——

Mr. DE FURIA. Who made the statement?

Captain WOODWARD. The statement was made by Senator McCarthy. It was made rather early in the hearing while he was questioning General Zwicker. At the time General Zwicker was pausing to get an answer for a question Senator McCarthy looked at his colleagues and, laughingly, said, "This is the first fifth-amendment general we've had before us."

Mr. DE FURIA. At the close of the hearing do you recall that General Zwicker was asked to step down from the witness stand?

Captain WOODWARD. Yes, sir; I recall that.

The CHAIRMAN. Would you lean a little closer to the microphone? It is difficult to hear you at all times.

Captain WOODWARD. Sorry.

Mr. DE FURIA. Will you please tell us, sir, what happened after General Zwicker was asked to step down from the witness stand?

Captain WOODWARD. General Zwicker, when he was asked to step down from the witness stand, was told by Senator McCarthy—I think he shook his finger at him—"General, you will be back on Tuesday, and at that time I am going to put you on display and let the American public see what kind of officers we have."

Mr. DE FURIA. Mr. Chairman, they were all the questions the committee counsel desires to ask, sir.

The CHAIRMAN. You may cross-examine.

Mr. WILLIAMS. I have only one question, I believe, of Captain Woodward.

Captain, you made reference to Senator McCarthy's using the term "fifth amendment" in some colloquy he had during the examination of General Zwicker; is that right?

Captain WOODWARD. The one that I mentioned directly referred to General Zwicker.

Mr. WILLIAMS. Yes.

Is that the only time you heard the fifth amendment referred to in relationship to General Zwicker?

Captain WOODWARD. That was the only time I heard General Zwicker referred to as a fifth-amendment general, sir.

Mr. WILLIAMS. Is that the only time, Captain, that you heard the fifth amendment referred to in relationship to General Zwicker?

Captain WOODWARD. As far as a personal relationship with General Zwicker, yes.

Mr. WILLIAMS. Yes.

And you heard all the testimony that morning?

Captain WOODWARD. I did.

Mr. WILLIAMS. You listened to it attentively, I presume?

Captain WOODWARD. As well as I could under the circumstances. I was pretty upset with the whole thing.

Mr. WILLIAMS. Now, I call the attention of the Chair to the fact that the colloquy at page 153 of the written record makes reference to this reference of fifth amendment, and I will read to the Chair—

The CHAIRMAN. What is the purpose of reading it to the Chair?

Is there an objection or do you want to do something about it?

Mr. WILLIAMS. I want to point out to the Chair that there was a reference in the record to this.

I will desist if the Chair doesn't want to hear it.

The CHAIRMAN. I didn't say I didn't want to hear it.

Mr. WILLIAMS. I have no further questions of this witness.

The CHAIRMAN. I want to know why.

Mr. WILLIAMS. Because he has said, Mr. Chairman, that he listened very attentively during this examination and he heard all the questions and answers propounded. He said that only once did he hear, as I understood his testimony just now, a reference to the fifth amendment in reference to General Zwicker, and I say that appears of record. So the record is the best evidence as to what was said on that occasion and not Captain Woodward's memory 8 months later.

The CHAIRMAN. The ruling has already been made under objection to the first testimony and what you are doing now is arguing the matter, which is not cross-examination. However, the record has been made.

Do you have any further questions?

Mr. WILLIAMS. No; I have no further questions. I simply wanted to point out what he testified to is a matter of record and, therefore, his testimony is irrelevant and incompetent.

The CHAIRMAN. The Chair will stand on the ruling made.

Do any members of the committee wish to ask any questions?

Incidentally, at this point, I should mention that Senator Carlson had an appointment for a brief time this morning at the State Department and will be back shortly.

Senator Case had to leave for home and will not be here today.

Both these members have been excused for the time mentioned.

Mr. WILLIAMS. Mr. Chairman, if there are no further questions of this witness, may I say something, sir?

Is he excused?

The CHAIRMAN. Did I understand that there are no questions?

Mr. DE FURIA. Yes.

The CHAIRMAN. You are excused.

Mr. WILLIAMS. I had intended, Mr. Chairman, to call this to your attention before we got under way this morning, but I didn't get a chance before the captain began testifying and I could speak.

Yesterday, sir, I reviewed the record somewhat extensively and I think it is rather apparent that there is quite a bit of confusion in the record with respect to this security classification of that two-and-a-quarter page document, and I hasten to say that I accept my full responsibility for any part of that confusion that I have generated.

But I do think it is awfully important for us this morning just to take a minute and I would like to do that, if I may, to point out just two things.

The CHAIRMAN. I will say, Mr. Williams, a little later we will probably have a witness who will be testifying to marking on documents of that kind, and probably at that time it would be appropriate to go into it.

Mr. WILLIAMS. There will be a witness?

The CHAIRMAN. There will be a witness; we anticipate one. If there is not, you call it up again before we close the hearing and you will have full opportunity.

Mr. WILLIAMS. Very well.

The CHAIRMAN. Call your next witness.

Mr. DE FURIA. Mr. Chairman, we desire to call General Zwicker, sir.

TESTIMONY OF GEN. RALPH W. ZWICKER

The CHAIRMAN. Raise your right hand and be sworn.

Do you solemnly swear the testimony you will give in this matter now pending before the committee, will be the truth, the whole truth, and nothing but the truth, so help you God?

General ZWICKER. I do.

The CHAIRMAN. You may examine.

Mr. DE FURIA. Colonel Johnson, may we have for the record your name, address, sir, rank, and official position?

Colonel JOHNSON. Lt. Col. Edward T. Johnson, Judge Advocate General's Corps, acting as personal counsel for General Zwicker during his testimony before this hearing.

The CHAIRMAN. The record may show that Colonel Johnson has taken the chair next to the witness and will be acting in the capacity mentioned by him.

Mr. DE FURIA. General Zwicker, may we have your full name and address, sir?

General ZWICKER. Ralph W. Zwicker.

Mr. DE FURIA. General, we have in the record a statement of your rank and record, so I will not go into those matters now, sir.

General, did you, as commandant of Camp Kilmer, receive a separation order with reference to a man named Peress?

General ZWICKER. I did.

Mr. DE FURIA. When did you receive that order, sir?

General ZWICKER. On January 23, 1954.

Mr. DE FURIA. Do you have a copy of it here, sir?

General ZWICKER. I do.

Mr. DE FURIA. May I ask Mr. Williams, Mr. Chairman, whether he has a copy of it?

Mr. WILLIAMS. I do not have a copy.

Mr. DE FURIA. Would you like to see one?

Mr. WILLIAMS. I would, sir.

The CHAIRMAN. Do you intend to interrogate him with respect to the order?

Mr. DE FURIA. Yes, Mr. Chairman. I would like the order to go into the record, sir.

The CHAIRMAN. After it has been properly identified, then the Chair can pass on the offer.

Mr. DE FURIA. Colonel Johnson, are there any other copies of that available, sir?

Colonel JOHNSON. I think I gave you virtually all of the copies, Mr. de Furia. I have one more here.

Mr. DE FURIA. After the conclusion of the interrogation with reference to this, would you mind giving it to the reporter, sir, or if the chairman desires to see it, sir—

The CHAIRMAN. It has not been offered yet. I am not ready to take it.

Mr. DE FURIA. Is that a classified paper or document, General?

General ZWICKER. It is not.

Mr. DE FURIA. Are you at liberty to reveal its contents, sir?

General ZWICKER. I am.

Mr. DE FURIA. Do you have an actual copy of the separation order here from your files, is that correct, sir?

General ZWICKER. This is not from my file. This was furnished by the Department of the Army, Adjutant General.

Mr. DE FURIA. Mr. Chairman, I would like to have that read into evidence by the general, if I may, sir.

The CHAIRMAN. You may proceed.

General ZWICKER (reading) :

RCM/EM/dtd/1D733a.

Suspense Date : 8 Feb 1954.

18 January 1954.

AGPO-SC 201 Peress, Irving.

(11 Jan 1954)

Subject : Relief from Active Duty and Separation from the Service.

To : Commanding General, First Army.

1. It is desired that Maj. Irving Peress, O1893643, DC, be relieved from active duty and honorably discharged from the Army at the earliest practicable date depending on officer's desires, but in any event not later than 90 days from date of receipt of this letter.

2. Individual or extract orders will be issued by direction of the President citing section 4 (b), Public Law 84, 83d Congress, as amended. Relief from active duty and discharge will be effective upon expiration of authorized rail travel time from place of separation to home of record. Orders directing issuance of 1D Form 214 and DD form 256A will provide for payment of mileage and lump-sum payment for unused leave.

3. Separation forms will be completed and forwarded via registered mail to officer after his separation (SR 135-175-5).

4. All commissions held by him will be terminated on effective date of discharge and he will not be tendered a reappointment in the USAR except by authority of the Department of the Army. Two copies of separation orders will be furnished to the Adjutant General, Department of the Army, Attn : AGPO-SC in addition to distribution required by SR 310-110-1 and SR 135-175-5.

5. Officer will not be separated prior to determination that he is physically qualified for separation by your headquarters. A prompt report will be made to this office in the event action cannot be taken without undue delay.

By order of the Secretary of the Army :

/s/ R. C. McDANIEL,
Adjutant General.

Copies for :

AMEDS Br-CMD
Res Br, Status Sec,
Rm 1C760, Pentagon
ACofS, G-1.

Mr. DE FURIA. General, to recapitulate, that order is dated when?

General ZWICKER. January 18, 1954.

Mr. DE FURIA. Received by you when, sir?

General ZWICKER. January 23, 1954.

Mr. DE FURIA. Can you tell us, General, when you communicated that order to Major Peress?

General ZWICKER. Yes, sir.

Mr. DE FURIA. What date?

General ZWICKER. Early on the morning of January 24, 1954.

Mr. DE FURIA. General, did you communicate that order to Senator McCarthy or any member of his staff?

General ZWICKER. I did.

Mr. DE FURIA. On what date, sir?

General ZWICKER. January 23, 1954.

Mr. DE FURIA. Is that the date you received it?

General ZWICKER. It was.

Mr. DE FURIA. To whom did you communicate the contents of that order?

General ZWICKER. Mr. Anastos.

Mr. DE FURIA. Is that George Anastos?

General ZWICKER. I do not know his first name, sir.

Mr. DE FURIA. Was that done personally, by wire, telephone, or how?

General ZWICKER. It was done by telephone at my own initiative.

Mr. DE FURIA. Did you meet, after talking by telephone with Mr. Anastos, Mr. Juliana, of Senator McCarthy's staff?

General ZWICKER. I did.

Mr. DE FURIA. On what date, sir?

General ZWICKER. On February 13, 1954.

Mr. DE FURIA. Where?

General ZWICKER. In my office at Camp Kilmer, N. J.

Mr. DE FURIA. Did you discuss with Mr. Juliana that separation order?

General ZWICKER. I did.

Mr. DE FURIA. What happened? What was the conversation, sir?

General ZWICKER. I gave Mr. Juliana such information of an administrative nature as I could relative to Major Peress. At the same time, I indicated to him that because of the President's order, I was not privileged to discuss much information relative to that same officer. I indicated to him that he was as well aware of this order as I, to which he replied, "I understand."

At that same time, I took from my file a copy of the order which has just been read into the record for the committee, and personally handed it to Mr. Juliana.

Mr. DE FURIA. When you reached New York, on February 18, 1954, General, I understand that you were not on the stand in the morning session. Is that right, sir?

General ZWICKER. That is right, sir.

Mr. DE FURIA. But that Senator McCarthy did direct a question or two to you, as you sat in the audience; is that correct, sir?

General ZWICKER. He did.

Mr. DE FURIA. Did you see a man named Harding there, seated ahead of you?

General ZWICKER. No, sir.

Mr. DE FURIA. Do you remember whether or not you made some muttered or audible reference to Senator McCarthy, as you were seating yourself, after answering the Senator's inquiry?

General ZWICKER. I do not recall making any remarks.

Mr. DE FURIA. This man, Harding, I believe stated that you said something with reference to Senator McCarthy, including "S. O. B." Have you any recollection of that, General?

General ZWICKER. Up until the time I heard that testimony given in this room, I had had no recollection, nor any reason for making any such a remark. After hearing the testimony given by Mr. Harding, I searched my memory very carefully; and, to this moment, I have no recollection of having made any such remark.

Mr. DE FURIA. Had there been any differences of opinion between the Senator and you, up to that moment?

General ZWICKER. No, sir.

Mr. DE FURIA. Had you talked to the Senator before he addressed an inquiry to you, seated in the audience?

General ZWICKER. No, sir.

Mr. DE FURIA. Did you see the Senator, after that time, and before you were called to testify?

General ZWICKER. I did.

Mr. DE FURIA. And when did you see him, sir?

General ZWICKER. I met the Senator in his office, which was adjacent to the hearing room, and chatted with him for a few moments prior to the time the executive session started in the afternoon.

Mr. DE FURIA. About what time was that, sir?

General ZWICKER. I would say it was about 1:30. I am not certain of that hour.

Mr. DE FURIA. What did you chat with the Senator about?

General ZWICKER. I mentioned to Senator McCarthy that I was happy to meet him, since I was from Wisconsin, myself; and I told him that I had been the last cadet appointed by the senior "Bob" La Follette to the Military Academy.

Mr. DE FURIA. I take it, it was a friendly conversation, and not about the Peress case, or anything else with which we are concerned; is that right?

General ZWICKER. So far as I know, that is correct.

Mr. DE FURIA. Now, we have had read into the transcript of these hearings, General, what happened while you were under examination. You made reference to certain Presidential and Army orders at that time. Will you tell us what orders you refer to in your testimony, and let us have copies, please?

General ZWICKER. I referred to two orders; the first being the separation order, which has just been read into the record; the second being the Presidential order, and the changes thereto, as set forth in certain Army regulations.

Mr. DE FURIA. May we have the date and reference to the Presidential order?

General ZWICKER. May I confer with counsel?

Mr. DE FURIA. Yes.

General ZWICKER. The first is paragraph 55, Army Regulations No. 380-10, Department of the Army, Washington 25, D. C., 23 November 1951.

It was an extract, under the heading "Military Security—Laws, Executive Orders, etc., Pertaining to Safeguarding Military Information."

Is it your desire that I read this paragraph, sir?

MR. DE FURIA. Is it very long, General?

General ZWICKER. One page, sir.

MR. DE FURIA. I should like, Mr. Chairman, to have it read into the record as we consider it of importance here.

MR. WILLIAMS. May I have a copy of that?

Colonel JOHNSON. Which paragraph is that?

General ZWICKER. Paragraph 55.

(Colonel Johnson produced certain copies, which he handed to Mr. de Furia.)

Colonel JOHNSON. And here is the change [handing another document to Mr. de Furia].

MR. DE FURIA. Will you please read that, General?

General ZWICKER. Paragraph 55?

MR. DE FURIA. Yes.

General ZWICKER (reading) :

55. PRESIDENTIAL DIRECTIVE OF MARCH 13, 1948

(Confidential Status of Employee Loyalty Records)

MR. WILLIAMS. Excuse me. I asked for a copy of that. Do you have an extra copy, please?

MR. DE FURIA. Colonel, do you have another copy, please?

Colonel JOHNSON. Yes [producing the same].

The CHAIRMAN. I think counsel for Senator McCarthy will probably want to look at that report.

MR. WILLIAMS. I have read it, Mr. Chairman.

The CHAIRMAN. You may continue.

General ZWICKER. The Army regulation referred to reads as follows:

The efficient and just administration of the Employee Loyalty Program, under Executive Order No. 9835 of March 21, 1947, requires that reports, records, and files relative to the program be preserved in strict confidence. This is necessary in the interest of our national security and welfare, to preserve the confidential character and sources of information furnished, and to protect Government personnel against the dissemination of unfounded or disproved allegations. It is necessary also in order to insure the fair and just disposition of loyalty cases.

For these reasons, and in accordance with the long-established policy that reports rendered by the Federal Bureau of Investigation and other investigative agencies of the executive branch are to be regarded as confidential, all reports, records, and files relative to the loyalty of employees or prospective employees (including reports of such investigative agencies) shall be maintained in confidence, and shall not be transmitted or disclosed except as required in the efficient conduct of business.

Any subpoena or demand or request for information, reports, or files of the nature described, received from sources other than those persons in the executive branch of the Government who are entitled thereto by reason of their official duties, shall be respectfully declined, on the basis of this directive, and the subpoena or demand or other request shall be referred to the Office of the President for such response as the President may determine to be in the public interest in the particular case. There shall be no relaxation of the provisions of this directive except with my express authority.

This directive shall be published in the Federal Register.

HARRY S. TRUMAN.

THE WHITE HOUSE, March 13, 1948.

13 F. R. 1359.

MR. DE FURIA. And the addendum.

General ZWICKER. I refer to Change No. 1 to Army Regulation 380-10, dated May 28, 1952.

Is it your desire that I read this, sir?

Mr. DE FURIA. Yes, please, sir, General.

General ZWICKER (reading) : AR 380-10, C 1

MILITARY SECURITY

LAWS, EXECUTIVE ORDERS, ETC., PERTAINING TO SAFEGUARDING MILITARY INFORMATION

Changes No. 1

DEPARTMENT OF THE ARMY,
Washington 25, D. C., 28 May 1952.

AR 380-10, 23 November 1951, is changed as follows:

55. PRESIDENTIAL DIRECTIVE OF 13 MARCH 1948

(Added) This Presidential directive has been relaxed as follows:

Hereafter, no information regarding individual loyalty or security cases shall be provided in response to inquiries from outside the executive branch unless such inquiries are made in writing. Where proper inquiries are made in writing, replies will be confined to two categories of information as follows: (1) If an employee has been separated on loyalty grounds, advice to that effect may be given in response to a specific request for information concerning the particular individual; and (2) if an employee has been separated as a security risk, replies to specific requests for information about that individual may state only that he was separated for reasons relating to suitability for employment in the particular agency. No information shall be supplied as to any specific intermediate steps, proceedings, transcripts of hearings, or actions taken in processing an individual under loyalty or security programs.

There is no objection to making available the names of all members of an agency loyalty board, but it is entirely improper to divulge the members who sat on particular cases.

No exception shall be made to the above stated policy unless the agency head determines that it would be clearly in the public interest to make specified information available, as in instances where the employee involved properly asks that such action be taken for his own protection. In all such cases, the requested information shall be released only after obtaining the approval of my office.

Extracts from President's letter to Secretary of State, dated 3 April 1952.

[AG 380.01 (19 May 52) G2-SMI]

By Order of the Secretary of the Army:

J. LAWTON COLLINS,
Chief of Staff.

Official:

WM. E. BERGIN,
Major General, USA,
The Adjutant General.

Mr. DE FURIA. In testifying that day before Senator McCarthy, General, were you endeavoring to comply with those directives?

General ZWICKER. I was.

Mr. DE FURIA. Before you testified, General Zwickler, do you recall whether a copy of a letter was given to Senator McCarthy by Mr. John Adams?

General ZWICKER. I do.

Mr. DE FURIA. Who is Mr. Adams?

General ZWICKER. Mr. Adams was counselor for the Department of the Army.

Mr. DE FURIA. Was he at the hearing in New York?

General ZWICKER. He was.

Mr. DE FURIA. Is that both in the morning and the afternoon sessions?

General ZWICKER. He was present during the morning session. He was in the building during the afternoon session, but during the time that I testified he was not present in the hearing room.

Mr. DE FURIA. He was not in the executive session?

General ZWICKER. No.

Mr. DE FURIA. When did he give the copy of this letter to Senator McCarthy?

General ZWICKER. As I recall, sir, he handed a copy of this letter to Senator McCarthy sometime between the close of the morning session and the opening of the afternoon session.

Mr. DE FURIA. Can you fix the time?

Senator MCCARTHY. I believe it was approximately noon, sir.

Mr. DE FURIA. And your testimony began at what hour?

General ZWICKER. About 4:30, sir.

Mr. DE FURIA. I show you a copy of a letter dated February 16, 1954, which I am going to ask the reporter to mark as a committee exhibit, and ask you whether you can identify it, sir.

General ZWICKER. This is a photostat of a ditto copy of a letter which I have in my files, sir.

Mr. DE FURIA. What connection does that photostat that I just handed to you have with the copy of the letter given by Mr. Adams to Senator McCarthy?

General ZWICKER. The copy given to Senator McCarthy by Mr. Adams is identical to that I have in the book; in other words, a ditto copy.

Mr. WILLIAMS. Mr. Chairman?

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Mr. Chairman, we are getting into an area of testimony now which Mr. Adams is perhaps only competent to testify to, unless this letter that Mr. Adams handed to Senator McCarthy was exhibited to the general before he handed it to him, and unless the general saw that, we are coming into a matter of conclusion at this point.

Mr. DE FURIA. I intended to ask that. I cannot ask all my questions at once. I am familiar with that rule, and if you will permit me to ask my next 2 or 3 questions, I will cover that.

The CHAIRMAN. Go ahead with the examination.

Mr. DE FURIA. Is that copy, so far as the wording and the words exactly the same as the copy you saw in the hearing room handed by Mr. Adams to Senator McCarthy?

General ZWICKER. Yes, sir.

Mr. DE FURIA. What conversation did you hear with reference to this paper handed by Mr. Adams to Senator McCarthy?

Mr. WILLIAMS. Isn't Mr. Adams the best witness to that, Mr. Chairman? Aren't we going out into the area of hearsay? Shouldn't John Adams come here to testify?

The CHAIRMAN. If this witness is giving direct, personal testimony of what he heard——

Mr. WILLIAMS. I understood that is what hearsay was, when somebody tried to testify to what he heard.

The CHAIRMAN. He was present and saw the letter discussed, and heard the conversation. I do not know how you can get it any more direct.

Mr. Adams cannot testify any more directly than this witness, with respect to that.

Mr. WILLIAMS. Is he offering it as proof of the truth of the things that were offered here?

Mr. DE FURIA. Senator McCarthy is a party to this conversation. How that can possibly be hearsay is just amazing to me.

Mr. WILLIAMS. I am talking about what Mr. Adams said. You asked what Mr. Adams said.

Mr. DE FURIA. Of course I did, in the presence of Senator McCarthy, and heard by this witness. Now how that can be hearsay—

The CHAIRMAN. I would say it is part of the *res gestae*. This entire transaction has been gone into at some length and I think the witness can testify as to what he heard said by Mr. Adams and what what was said by Senator McCarthy, if he heard anything. If he goes outside of the field we are talking about, of course it will probably be objectionable.

Mr. DE FURIA. Will you proceed, please, General?

General ZWICKER. Will you please ask your last question again?

Mr. DE FURIA. The question is, what conversation did you hear, if any, between Mr. Adams and Senator McCarthy with reference to the copy of that letter handed to Senator McCarthy by Mr. Adams?

General ZWICKER. As Senator McCarthy looked at the letter, he said to Mr. Adams:

"I don't believe that Bob Stevens wrote this letter."

Mr. DE FURIA. What happened after that, if anything?

General ZWICKER. I don't know, sir. There is nothing further that I can testify to as to what happened.

Mr. DE FURIA. What happened to the copy that was handed to Senator McCarthy by Mr. Adams?

General ZWICKER. So far as I know, he kept it.

Mr. DE FURIA. Who kept it?

General ZWICKER. Senator McCarthy.

Mr. DE FURIA. Now, General, do you remember at the conclusion of your testimony being asked to step down from the witness stand?

General ZWICKER. Yes, sir.

Mr. DE FURIA. Did you leave the room then?

General ZWICKER. No, sir.

Mr. DE FURIA. Who was in the room when you were asked to step down?

General ZWICKER. Captain Woodward and only members of the committee or representatives of Senators who were members of the committee.

Mr. DE FURIA. What happened after you stepped down from the witness stand?

General ZWICKER. Senator McCarthy addressed me and said—

Mr. DE FURIA. I want the number of persons present. Did anybody else come in the room or did anybody leave the room?

General ZWICKER. No one entered or left the room immediately, sir.

Mr. DE FURIA. Very well. Go ahead.

General ZWICKER. Senator McCarthy looked at me, and he said, "General, I'm going to have you back here Tuesday and put you on display before the public in order that they may see just what kind of incompetent officers we have in our Army."

MR. DE FURIA. Did you make any reply to that, sir?

General ZWICKER. I did not.

MR. DE FURIA. What happened next?

General ZWICKER. The Senator then invited the press into the chambers.

MR. DE FURIA. How many gentlemen of the fourth estate came in at that point?

General ZWICKER. A good many, 20—25.

MR. DE FURIA. Can you tell us what happened, what was said or done after the press entered the room?

General ZWICKER. Yes, sir.

MR. DE FURIA. Will you, please?

General ZWICKER. I and other members who had attended the morning session, other Army members, since it was now open, took seats in the jury box, which I would judge to be 10 to 15 feet from the table about which the press was gathered, and at the head of which Senator McCarthy took his place.

Senator McCarthy reviewed certain aspects of the testimony.

MR. DE FURIA. Well, can you give us his words, if possible, General?

General ZWICKER. I cannot.

MR. DE FURIA. Very well. Proceed.

The CHAIRMAN. Can you give the substance of his words, of his statement?

General ZWICKER. I can give the effect on me, sir.

The CHAIRMAN. Well, you were not asked that. If you cannot remember the exact words, you are entitled, under the circumstances at this time, to give substantially what was said.

General ZWICKER. Substantially, he indicated that I had been a very balky witness; that I had failed to answer his questions; that he felt that I was covering someone; that he was going to get at the bottom of this matter; that he would not tolerate having officers answer questions in this manner.

I believe that's the substance, sir.

The CHAIRMAN. What did he tell them?

Did he tell them how you answered?

General ZWICKER. Beg pardon, sir?

The CHAIRMAN. Did he tell them how you answered?

General ZWICKER. I don't recall that he did, sir.

The CHAIRMAN. Proceed.

MR. DE FURIA. Will you proceed describing your recollection, General, of what occurred after the press came in?

General ZWICKER. I recall further that he did address remarks to me and others in the jury box.

MR. DE FURIA. What were those remarks?

General ZWICKER. To the effect that if we didn't agree with the manner in which he had made his presentation before the press, that it would be our privilege to contradict him or refute such statements.

MR. DE FURIA. Now, this is Senator McCarthy speaking?

General ZWICKER. Yes, sir.

MR. DE FURIA. Very well.

What, if anything, did Senator McCarthy say to the press?

General ZWICKER. In substance what I have tried to outline to the chairman, sir.

MR. DE FURIA. Did you make any reply?

General ZWICKER. I did not. I felt that I was not privileged to make a reply inasmuch as my training has always led me to believe an executive or closed session, whether it be of a court or a board or any hearing, is inviolate until after it has been publicly released. I, therefore, could not make any remark on anything that I heard, in my way of thinking, within the executive session.

Mr. DE FURIA. Do you recall, General, whether any mention was made to the press about the proposed meeting for the following Tuesday?

General ZWICKER. I'm sorry, sir. Will you repeat that question?

Mr. DE FURIA. I think you said that Senator McCarthy said to you that you would have to come back the following Tuesday, is that right?

General ZWICKER. Yes, sir.

Mr. DE FURIA. Now, was any mention of that made when the press was in the room?

General ZWICKER. It was.

Mr. DE FURIA. Well, was that a repetition of the remark or is it the same remark?

General ZWICKER. No, sir. He did not use the same language that he used to me prior to the press coming in.

Mr. DE FURIA. He did not use that later?

General ZWICKER. No, sir.

Mr. DE FURIA. May we have a moment, sir, Mr. Chairman?

The CHAIRMAN. The committee will resume session.

Mr. DE FURIA. Mr. Chairman, I desire to have entered in the record at this point the letter which has already been handed to the reporter to be marked as a committee exhibit and which is from Secretary of the Army Stevens to Senator McCarthy under date of February 16, 1954, in reply to a letter from the Senator to the Secretary of February 1, 1954.

Mr. WILLIAMS. Mr. de Furia, I know you have already given me a copy of that letter. You gave it to me a couple of days ago, but I am sorry it isn't handy now. May I have one, please?

Mr. DE FURIA. Yes, sir.

Mr. WILLIAMS. Thank you.

Mr. DE FURIA. General, may I ask this one question: Am I correct that this letter from Secretary of the Army Stevens to Senator McCarthy, dated February 16, 1954, is not classified?

General ZWICKER. It is not.

Mr. DE FURIA. And I may read it, sir?

General ZWICKER. Yes, sir.

The CHAIRMAN. Does counsel want further time before we proceed with the examination?

Mr. WILLIAMS. No, sir.

The CHAIRMAN. You may proceed with the reading.

Mr. DE FURIA (reading):

FEBRUARY 16, 1954.

HON. JOSEPH R. MCCARTHY,

*Chairman, Permanent Investigating Subcommittee,
United States Senate.*

DEAR SENATOR MCCARTHY: This refers to your letter of February 1 and to your telegram of February 8 sent from Aberdeen, S. Dak., both of which make reference to the Army officer, who, in a recent appearance before the Senate

Permanent Investigations Subcommittee, invoked the fifth amendment and refused to answer certain questions.

The developments of this case have made it obvious to me and to the Army staff that there were defects in the Army procedures for handling men called to duty under the provisions of the Doctors Draft Act, and that it has unfortunately been possible in the past for commissions to be tendered to individuals who might be undesirable. As a result of these disclosures I have already issued instructions for corrective changes in current practices.

I believe that the changes already instituted will make certain that there will be no repetition of the circumstances which occurred in the case to which you allude. These changes will avoid tendering a commission to any individual who refuses to submit loyalty data, will terminate the commission of any Reserve officer not on active duty who likewise refuses to submit such data, and will require the immediate separation from active duty under conditions other than honorable of Reserve officers who may refuse to answer questions on the subject when properly asked. These rules may not be invoked in the case of Regular officers, whose appointments are governed by different laws than are the Reserves, but I am having a study made to determine what if any changes of law should be made to permit handling of a Regular officer if such a case should develop in the future.

In addition to the foregoing steps, I have directed the Inspector General of the Army to initiate an exhaustive investigation for the purpose of determining two things: First, whether there are any additional areas of collusion or conspiracy which might have been inspired by subversive interests in the assignment, transfer, or other personnel handling of the officer in question.

Among the reasons why an isolated situation such as this can develop are the great size of the Army, its fluctuating population, its worldwide operations, and the fact that a large portion of our personnel, including a substantial proportion of our medical and dental officers, are impressed into the service through the operation of the Selective Service Act and the Doctors Draft Act. Taking a cross section of the population as we do, there have been isolated possibilities for individuals to receive commissions even though they may be undesirable. This situation must and will be corrected.

The case of this officer had come to the Army's attention, and the decision had been made on December 30 to separate the officer from the service by reason of his unwillingness to submit loyalty information. The officer was in the last 60 days of his service prior to such separation when he was interrogated by your committee. The changes being made in our procedures will, among other things, require immediate separation of these individuals instead of giving them 90 days' notice, as was done in this case. The Army has been conducting loyalty and security investigations for many years, both in Washington and in all of its field headquarters, and is fully aware of its great responsibility to the Nation to maintain as tight a security screen as is possible. We are all cognizant of the extent to which our system fell down in this case. We do not defend this shortcoming and intend that such cases shall not recur.

You made reference to his change of orders for far-eastern duty. From the early information which is available to me, the indications are that his request for compassionate transfer to New York City was favorably considered only after it was first concurred in by representatives of the American Red Cross, who made a personal investigation of the facts and who advised his commanding officers that his wife and child were in fact under medical care and in need of his presence at home. It was then passed upon by a board of officers appointed by the Surgeon General.

It should be emphasized that throughout the period when the officer was under investigation he was assigned to duties of a nonsensitive nature and was not given access to classified information.

During the period of investigation along with many other medical and dental officers, this officer was adjusted in rank on criteria based on past professional experience as established in the Doctors Draft Act. These adjustments were automatic and were accomplished administratively in accordance with the law by the Department of the Army in Washington. Under this adjustment program this officer was changed in grade from captain to major. It is admitted that this grade adjustment took place while the officer was under investigation. It should not have taken place. The circumstances of this advancement are being examined by the inspector general. I have taken steps to insure that such a thing cannot happen again.

The suggestion which you made in your letter that the officer's discharge should be reversed and that he should be recalled for the purposes of court-martial on charges of conduct unbecoming an officer have been examined and appear to be impracticable. In the first place the separation of an officer under circumstances such as this is a final action, and there is no means of which I am aware by which the action could be successfully reversed. In the second place the Army does not have available facts on which sound charges would be placed, except the refusal of the officer to answer questions before the committee. Careful examination of authorizing legislation indicates that this act in itself probably is not sufficient to sustain charges of any offense on the part of the officer. A case based on very similar charges was prosecuted unsuccessfully last year by courts-martial.

You have further suggested in your letter the possibility that the individuals who participated in the final personnel action on this individual should be court-martialed for possible conspiracy. As stated, I have asked the inspector general of the Army to investigate the case, and if there can be developed any facts other than this was a routine personnel action taken under regulations in existence at the time, you can be assured that I will take vigorous action against the individuals involved.

Let me assure you that I appreciate the fact that you brought this matter to my personal attention. I stated quite emphatically to members of the press when I was interrogated on my return from the Far East on February 3, that I had the personal feeling that an officer should not get an honorable discharge from the service if he refuses to answer questions properly put to him by a congressional committee. The regulations now being published will assure that similar actions in the future will result in discharge under other than honorable conditions. I regret that this case was handled as it was during my absence in the Far East.

In your telegram you spoke of a War Department order of December 30, 1944, prohibiting discrimination against military personnel because of political beliefs. I have investigated the files on that matter, and have ascertained that the directive in question was rescinded on March 4, 1946, during the tenure of the late Robert P. Patterson as Secretary of War.

You also alluded in your telegram to an Army order that files containing evidence of Communist membership on the part of military personnel be destroyed. As to this matter, I am having all the records of the Army carefully searched for available information. From what I have already discovered, a subcommittee consisting of Senators Bridges, Chandler, and O'Mahoney called on Secretary of War Stimson on May 22, 1944, and on the following day he wrote them a letter in which he assured them that no such files were being destroyed. Later, on February 27, 1945, Assistant Secretary McCloy appeared before a special subcommittee of the House Committee on Military Affairs and denied that records of this sort were being destroyed. Additionally, there is in Army files a copy of a letter from Secretary Patterson to Senator Ferguson dated February 21, 1947, which indicates that he made another examination into these same allegations and was satisfied that such records were not being destroyed.

When the inspector general has completed his investigation, I will communicate with you further. In the meantime, with personal regards, I am

Yours sincerely,

ROBERT S. STEVENS,
Secretary of the Army.

Mr. DE FURIA. General Zwicker, in testifying before Senator McCarthy, did you intend to be evasive?

General ZWICKER. No, sir.

Mr. DE FURIA. Did you intend to be arrogant?

General ZWICKER. No, sir.

Mr. DE FURIA. Did you intend to be irritating?

General ZWICKER. No, sir.

Mr. DE FURIA. Were you examined by Roy Cohn before being examined by Senator McCarthy?

By that, I mean were you questioned by Mr. Cohn? Did he ask you certain questions before Senator McCarthy questioned you?

General ZWICKER. I do not know whether Mr. Cohn asked his questions before or after, or during the progress of the interrogation.

He did, however, interrogate me.

Mr. DE FURIA. Will you please look at a record of the hearing of February 18, 1954, and refresh your recollection?

General ZWICKER. What page?

Mr. DE FURIA. The very beginning of that hearing, which would be page 145, sir.

Colonel JOHNSON. May I say, Counsel, we do not have the published copy. We have a photostatic copy here of the record.

General ZWICKER. Yes, sir.

Mr. DE FURIA. Can you tell us whether Mr. Cohn questioned you before Senator McCarthy, or not?

General ZWICKER. He did.

Mr. DE FURIA. Was there any difficulty between you and Mr. Cohn?

General ZWICKER. None whatever.

Mr. DE FURIA. What was your demeanor toward Mr. Cohn, and what was Mr. Cohn's demeanor toward you?

General ZWICKER. Very proper.

Mr. DE FURIA. Do you recall having a conversation with General Lawton, General Zwickler?

General ZWICKER. I have had many conversations with General Lawton, sir.

Mr. DE FURIA. The conversation about which General Lawton testified?

General ZWICKER. Yes, sir.

Mr. DE FURIA. You recall that conversation?

General ZWICKER. I do.

Mr. DE FURIA. In his testimony, General Lawton was unable to recall any specific words or, as I think, as he said, any specific quotes on the subject of Senator McCarthy.

Do you recall any conversation?

General ZWICKER. I do not.

Mr. DE FURIA. Do you recall discussing Senator McCarthy, in your conversation with General Lawton?

General ZWICKER. No, sir.

Mr. DE FURIA. When did the Peress case first come to your attention, sir?

General ZWICKER. In August of 1953.

Mr. DE FURIA. Had you at any time given the name of Peress to Senator McCarthy, or to his committee?

General ZWICKER. Yes, sir.

Mr. DE FURIA. Was that done by you voluntarily, or as a result of being asked?

General ZWICKER. As a result of being asked by Mr. Anastos, of Senator McCarthy's committee.

Mr. DE FURIA. How did he ask you? What did he say to you, and when did he say it?

General ZWICKER. On January 21, 1954, I received a phone call from Mr. Anastos, who represented himself to be a member of Senator McCarthy's committee, and, not being willing to accept that, I asked if I might return this call, calling him not by number, but by office, and he said that would be fine.

I did that, and again got Mr. Anastos on the phone.

The CHAIRMAN. I would like to call your attention to the fact that counsel, in questioning you, first mentioned 1953, and in your last statement, I think you mentioned August 1954.

General ZWICKER. In August 1953, sir, was the first that I became familiar.

The CHAIRMAN. Unless my ears fooled me, I think that is what I heard, first, 1953, and then you said August 1954.

General ZWICKER. I am sorry, sir. August 1953 is the correct date on which we became fully acquainted with the Peress case.

Mr. DE FURIA. And then, when did you talk to Mr. Anastos?

General ZWICKER. I think, on January 21, 1954.

Mr. DE FURIA. Very well.

Now, what did you tell Mr. Anastos; if anything?

General ZWICKER. Mr. Anastos called and said, in substance, "We understand that you have a major in the Dental Corps, stationed at Camp Kilmer, who is—" I am sorry, I cannot testify as to the exact speech.

Mr. DE FURIA. All right.

General ZWICKER. Counsel says I may.

Mr. DE FURIA. Very well.

General ZWICKER. Mr. Anastos said to me, "We understand that you have a dental major in the Dental Corps, stationed at Kilmer, who is alleged to have a Communist background and has failed to sign the necessary form," and other words of that general nature.

I replied, after having gotten the question, and after the first part of the call, having called Mr. Anastos back to be sure I was talking to Mr. Anastos, and that he was definitely a representative of Senator McCarthy's committee. I said—and Mr. Anastos should recall it—"Mr. Anastos, I believe that the person to whom you were referring is Maj. Irving Peress."

Mr. DE FURIA. General, in testifying before Senator McCarthy, did you utter any untruth whatever?

General ZWICKER. Not knowingly; I did not.

Mr. DE FURIA. Have you gone over your testimony since that day in New York?

General ZWICKER. Yes, sir.

Mr. DE FURIA. Can you tell this committee today whether or not, upon reflection and consideration of your answers, you, in your opinion, uttered any untruth whatever, under oath, before Senator McCarthy?

General ZWICKER. In my opinion, I certainly did not.

Mr. DE FURIA. Mr. Chairman, that concludes our questions of this witness at this time, sir.

The CHAIRMAN. There is a matter that has come to the attention of the Chair. However, I think I shall wait until the witness has been examined by Mr. Williams before taking that up.

Senator STENNIS. Mr. Chairman.

The CHAIRMAN. Senator Stennis.

Senator STENNIS. I do not want to question the witness now, but for clarification I wanted to know to whom the letter that has just been read, signed by Secretary Stevens, was addressed and what was its date?

MR. DE FURIA. February 16, 1954, to Hon. Joseph R. McCarthy, from Robert T. Stevens, Secretary of the Army. I have a copy here that I should be very happy to pass down to you, Senator.

Senator STENNIS. Thank you, Mr. Chairman.

The CHAIRMAN. Do you wish to ask any further questions, Senator Stennis?

Senator STENNIS. No, thank you.

The CHAIRMAN. I understood generally that the committee would ask questions after the counsel had finished.

The committee members, of course, may ask questions at any time they desire.

Are there any members of the committee who wish to ask the witness any questions at this stage?

Senator JOHNSON. I have some questions.

The CHAIRMAN. Senator Johnson.

Senator JOHNSON. General Zwicker, are you a graduate of West Point?

General ZWICKER. Yes, sir.

Senator JOHNSON. You have been in the Army all your life, then, since graduation?

General ZWICKER. Yes, sir.

Senator JOHNSON. Have you ever resented, or have you ever expressed resentment with respect to, letters to you from Members of Congress, or inquiries by Members of Congress concerning military personnel serving under your command?

General ZWICKER. No, and quite the contrary, sir.

Senator JOHNSON. Would you and do you and have you classed congressional letters or inquiries as PI, meaning political influence?

General ZWICKER. No.

Senator JOHNSON. Have you ever marked such letters "PI" and attached them to the files of military personnel serving under you?

General ZWICKER. Never.

Senator JOHNSON. You have never been provoked or expressed provocation over inquiries made to you by Members of Congress with respect to personnel serving under you?

General ZWICKER. No, sir; not provoked.

Senator JOHNSON. What would you call it then, if not provoked?

General ZWICKER. Well, it adds a great burden to the work that has to be done at any headquarters at some time or other. Mr. Senator, and it is just another time-consuming function which we, as post commanders or anyone associated must perform. Of course, we must reply to those letters and it is a time-consuming function.

Senator JOHNSON. And an onerous function?

General ZWICKER. Yes, sir. If you wish me, I could give you my opinion of such letters.

Senator JOHNSON. Well, I would like to have your opinion of such letters, sir.

General ZWICKER. For a long period of time, from the time I arrived at Camp Kilmer until almost the first of 1954, I was averaging six congressional letters a day. It required that those letters be answered within 48 hours after their receipt. Each of such letters had something to do with personnel who were either at or being processed through Camp Kilmer.

I, myself, and I was very careful to instruct my staff that these letters be given the fullest consideration because it was my experience that they were, a portion of such letters were, in fact, correct and, in fact, had brought to my attention or someone else's attention an injustice of some kind that should be corrected.

Therefore, it has always been my opinion that regardless of how many we get, how many which may not have any substance in fact, that there are always bound to be some which call to our attention correctable deficiencies. Therefore, each must be investigated thoroughly and each must be answered frankly, and if there is corrective action necessary, it should be taken immediately.

Senator JOHNSON. You have taken these inquiries seriously then?

General ZWICKER. Yes, sir; very seriously.

Senator JOHNSON. And courteously?

General ZWICKER. Yes, sir.

Senator JOHNSON. You, of course, understand that Members of Congress must pass on inquiries to the military and that the right of petition is a constitutional right, and that soldiers are entitled to that right the same as other civilians?

General ZWICKER. Yes, sir.

Senator JOHNSON. Is that your belief?

General ZWICKER. Yes, sir.

Senator JOHNSON. And your attitude?

General ZWICKER. Yes, sir.

Senator JOHNSON. General, do you have a right to be more frank in your testimony today than you had in the hearing before Senator McCarthy?

Are the wraps off today and were they not off when you testified before Senator McCarthy.

General ZWICKER. I do not believe there is much difference, sir. I think that the rules have been relaxed to permit me to testify here to certain things that I felt I could not testify to at the time that Senator McCarthy had his hearing.

Senator JOHNSON. Then there were no more restrictions when you testified before Senator McCarthy than are imposed upon you at this time?

General ZWICKER. I do not believe so; no, sir.

Senator JOHNSON. That is all, Mr. Chairman.

The CHAIRMAN. Does any other Senator wish to question the witness? If not, Mr. Williams, you may proceed.

Mr. WILLIAMS. Thank you, Mr. Chairman.

General, as I understand you, sir, you took command at Camp Kilmer in July 1953; is that right?

General ZWICKER. Yes, sir.

Mr. WILLIAMS. Where had you been assigned prior to coming to Camp Kilmer?

General ZWICKER. Immediately prior to that, I was assistant division commander of the Fifth Infantry Division at Indiantown Gap, Pa.

Mr. WILLIAMS. It was in August, as I understood it from your testimony, that you became aware of the Irving Peress case; is that right?

General ZWICKER. That is right.

Mr. WILLIAMS. You knew that Peress had been in the Army since January of 1953, January 1, to be exact, is that not correct?

General ZWICKER. I would have to refresh my memory as to the date when he came into the Army.

Mr. WILLIAMS. You do not have any recollection on that?

General ZWICKER. No immediate recollection, Mr. Williams; no, sir.

Mr. WILLIAMS. But he had been at Camp Kilmer for some time antedating your being there?

General ZWICKER. Yes, sir; he came to Kilmer in March of 1953.

Mr. WILLIAMS. And it was almost as soon as you took over at Camp Kilmer that this case was brought to your attention?

General ZWICKER. Within a month.

Mr. WILLIAMS. It was brought to your attention, because, as has been indicated here today, in direct examination and in this letter, Peress was under investigation for loyalty reasons?

That has already come out here, General. You said this is not classified information.

Mr. de Furia read that very thing into the the record a few minutes ago.

The CHAIRMAN. Just a minute. There is no reason to lecture the witness. He has a right to ask his counsel. He will probably answer when he gets done conferring with his counsel, but I wouldn't lecture him in the meantime.

Colonel JOHNSON. I want to get the exact purport of how much is included. Can it be reread?

Mr. WILLIAMS. I will restate it for you, Colonel, so that it will save the reporter's going back.

I asked General Zwickler if, in August, right after he took command at Camp Kilmer, it was brought to his attention that Irving Peress, a captain at that time under his command, was under loyalty investigation for Communist activities.

General ZWICKER. I must really decline to answer that question on the grounds of the Presidential order.

Mr. WILLIAMS. Mr. Chairman, I am going to ask you if you will, sir, to order this witness to answer that question for this reason: There cannot be any question about this being classified information now, because as I understood the direct examination, the letter which was read into evidence from Secretary Stevens to Senator McCarthy relates that very information which this witness at that time said in response to a question from Mr. de Furia was not classified information.

Now when I undertake to cross-examine him on this, his counsel advises him that it becomes classified again. So I respectfully request that he be ordered to answer this question.

The CHAIRMAN. Will you direct my attention to the specific language in the letter? I do not have a copy before me, and I do not recollect it.

Mr. WILLIAMS. Yes, sir. At page 3, it says, on the very top:

It is admitted that this grade adjustment took place while the officer was under investigation. It should not have taken place. The circumstances of this advancement are being examined by the Inspector General.

At another point, Mr. Chairman, at page 2, in the second paragraph, Secretary Stevens, in this unclassified letter, says:

The case of this officer had come to the Army's attention, and the decision had been made on December 30 to separate the officer from the service by reason of his unwillingness to submit loyalty information.

Now, there cannot be any question about this being classified information.

General Zwicker himself has said, under oath, it was not classified, and Secretary of the Army Stevens relates this information in a letter. It has been read into the record, and I ask again that the general be ordered to answer this question, so that I may continue my cross-examination.

The CHAIRMAN. Since you have had your attention called to instances in the letter from Secretary Stevens to Senator McCarthy, will you change your position?

General ZWICKER. No.

The CHAIRMAN. I would like—I think the committee would like—an explanation of how this material, or the fact that he was under investigation, having you testify to it, is breaking security regulations.

Can you explain that, General?

Colonel JOHNSON. Mr. Chairman, would the chairman object to my attempting to give a short explanation for the general, since it is a matter—

The CHAIRMAN. Well, the committee is very much interested in this matter and, unless there is some overriding reason, we want the question answered.

Colonel JOHNSON. Well, the general basis of it is, sir, that a file, which is a classified file, is beyond the scope of examination insofar as the general is concerned.

The fact that the Secretary of the Army may have undertaken to release, through a letter, to someone outside the Army, information that is within that file or may be within it, does not, in any way, declassify the file.

Insofar as the general was concerned, he is still bound by the classification contained on the file itself, and the fact that Secretary Stevens in an unclassified letter gave certain information to Senator McCarthy and the Army has furnished copies of that letter to this committee, does not release General Zwicker from his responsibilities under the security regulations.

Mr. WILLIAMS. Mr. Chairman—

The CHAIRMAN. In other words, what you are saying is that the Secretary can say that he was under investigation, but it does not unbind the mouth of the general to say the same thing?

Colonel JOHNSON. That is right, sir.

The CHAIRMAN. That is the legal position the Army takes in that matter?

Colonel JOHNSON. Yes, sir.

Mr. WILLIAMS. May I be heard, sir?

The CHAIRMAN. We will listen to you, Mr. Williams.

Mr. WILLIAMS. Thank you.

I ask, sir, that the reporter read to this committee the direct examination of General Zwicker here this morning, wherein it is my distinct and clear recollection, and I will stand on it until the reporter says I am wrong, that Mr. de Furia handed General Zwicker the letter; General Zwicker said that he had read the contents of that letter; he had read them both on February 18 and he had looked at the letter again this morning and identified it.

Mr. de Furia asked General Zwicker if it contained classified information.

He said, "No, sir."

Mr. de Furia said, "May I read it?"

General Zwicker said, "Yes, sir."

Senator STENNIS. Mr. Chairman, may I——

Colonel JOHNSON. May I respectfully point out, sir, that he did not ask whether the letter contained classified information.

He asked whether the letter was classified.

Mr. DE FURIA. That is right.

Colonel JOHNSON. And it is not.

Mr. DE FURIA. That is right.

The CHAIRMAN. No demonstrations, please, or we will have to send out of the room those who offend.

Senator STENNIS. Mr. Chairman?

The CHAIRMAN. I am sorry I had to say that, but this is the first time it has occurred since we started these hearings. The behavior has been very good, up to this point.

Senator STENNIS. Mr. Chairman.

The CHAIRMAN. Senator Stennis.

Senator STENNIS. May I just make this observation to the Chair?

I understand the inquiry here is merely as to the fact: Was there an investigation in progress?

The question doesn't go to what the file discloses, the facts that are in the file.

As I understand Mr. Williams' question, it is just: Was there an investigation in progress at this time?

Mr. WILLIAMS. That is my question, Senator.

Senator STENNIS. It seems to me like that has already been disclosed.

In effect, he said it would not be an admissible fact without going into the file itself.

The CHAIRMAN. That happens to be the Chair's memory, that that——

Mr. WILLIAMS. I also want to point out to the Chair that General Zwicker has already testified, under direct examination, that he told Mr. Anastos on January 21 that this investigation had been conducted, and it wasn't apparently classified at that time, when he told it to Mr. Anastos, and he wasn't referring to the letter at that time.

He was imparting the very information which he now contends, through his lawyer, is classified information.

Colonel JOHNSON. I believe that again, sir, is a misstatement of what the testimony was.

The CHAIRMAN. Just a moment.

Colonel JOHNSON. The testimony was that he was requested, given certain information by Mr. Anastos, and he replied, in a letter on that, probably the individual Mr. Anastos sought was Major Peress.

He did not state——

The CHAIRMAN. Well, I think you are right on that.

Mr. WILLIAMS. In other words, it isn't classified information when he identifies the very individual who is on examination.

Is that your position, Colonel?

He identified the very individual who was under examination and investigation by the Army on January 21, to Mr. Anastos, and it

wasn't classified at that time, but for purposes of cross-examination it becomes classified here today?

Mr. Chairman, I respectfully submit, sir, that information is either classified or not, and I don't think it becomes unclassified because it is in this letter and classified because it is the subject of cross-examination, unclassified when he is talking to Mr. Anastos and classified when I ask him about it.

It seems to me that is playing tweedledee and tweedledum.

I think I am entitled to answers to these questions.

I ask the Chair again that he be ordered to answer it.

The CHAIRMAN. The question again is, of course, what this witness is permitted to do under his Army orders, under the regulations. The information, itself, may be perfectly harmless, but if his orders are that he can't discuss that matter or reveal that this gentleman was under investigation, I don't see why we should try to compel him to answer if those are his orders.

I think if it is highly important, since we have the letter, anyway, from the Secretary, himself, we could make the request of the Defense Department that he may answer that one question; but I anticipate the next question you want to ask will have the effect of going into the files. Is that what you intend to do?

Mr. WILLIAMS. You are anticipating me improperly, now, Mr. Chairman.

The CHAIRMAN. I am sorry.

Mr. WILLIAMS. I hope that isn't a predicate for your ruling, what question I may ask hereafter.

I simply want an answer to this question at this time, and I think we are entitled to a ruling on it.

The CHAIRMAN. I am very much in doubt on this point. Since it has been brought forth, I am very much in doubt. The Secretary has already made the statement, himself, but does that put the Army officer into the position where he can answer?

We will pass that for the moment.

It has been suggested by Senator Stennis we take the matter under advisement during the recess.

Senator STENNIS. I just say that since we are so near 12 o'clock.

The CHAIRMAN. I think that is a good question. It is a very close question; and if you have other matters you can examine on, we will reserve that question.

Mr. WILLIAMS. Yes, sir.

I shall pass from that question, General, the question as to whether or not Peress was under investigation, to your knowledge, in August of 1953, for Communist activities, and I can ask you, sir, if he remained on active duty in September of 1953 at your post?

General ZWICKER. He did.

Mr. WILLIAMS. I shall ask you if he remained on active duty in October of 1953?

General ZWICKER. He did.

Mr. WILLIAMS. And in November of 1953, as I recall your testimony on direct examination, Captain Peress was promoted to Major Peress, is that correct?

General ZWICKER. There was an adjustment of rank made in November.

Mr. WILLIAMS. The adjustment was not down; it was up, wasn't it?

General ZWICKER. I am sorry, sir.

Mr. WILLIAMS. The adjustment was not down, was it?

General ZWICKER. Oh, no.

Mr. WILLIAMS. It was up?

General ZWICKER. Yes, sir.

Mr. WILLIAMS. And he became a major in November of 1953?

General ZWICKER. That's correct.

Mr. WILLIAMS. Then, in December of 1953, he was still on active duty at your post?

General ZWICKER. He was.

Mr. WILLIAMS. Is that correct?

General ZWICKER. Yes, sir.

Mr. WILLIAMS. Of course, you cannot tell us, as I understand, your interpretation and your counsel's interpretation as to the course of the investigation at this time?

General ZWICKER. That's correct.

Mr. WILLIAMS. It was in January 1953 that you had had this conversation with Mr. Anastos; is that right?

General ZWICKER. What conversation?

Mr. WILLIAMS. The only conversation you talked about this morning.

General ZWICKER. Yes, sir; that's correct.

Mr. WILLIAMS. With Mr. Anastos—that is the only one I am asking you about. Did you have several conversations with him?

General ZWICKER. Two, sir.

Mr. WILLIAMS. When was the other one?

General ZWICKER. The one on the 21st of January and one on the 23d of January.

Mr. DE FURIA. Mr. Williams, wasn't that 1954?

General ZWICKER. Yes; 1954, not 1953.

Mr. WILLIAMS. We have not reached the 21st—which conversation are you talking about, the 21st of January 1953; is that correct—1954?

General ZWICKER. 1954.

Mr. WILLIAMS. Now, at the time that you had that conversation, Peress was still on active duty at Camp Kilmer?

General ZWICKER. He was.

Mr. WILLIAMS. He was still at that time a major?

General ZWICKER. Yes, sir.

Mr. WILLIAMS. So that there had been an elapsed period of some 6 months since this case came to your attention for the first time when you took over as commander of Camp Kilmer?

General ZWICKER. Yes, sir.

Mr. WILLIAMS. Now, General, you were asked on February 18, when you took the witness stand, this question. So that you can follow with me, I direct your attention to page 146 of the printed copy.

Mr. DE FURIA. Is that February 18, Mr. Williams?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Well, you know that somebody has kept this man on, knowing he was a Communist, do you not?

And you answered that question, "No, sir."

Your answer was that you did not know that anyone had kept him on, knowing he was a Communist; is that right?

General ZWICKER. That's correct.

Mr. WILLIAMS. Now, when you made that answer, you did know, did you not, that in August of 1953, he had claimed the fifth amendment when asked about his Communist activities?

General ZWICKER. I must respectfully decline to answer that.

Just a moment, please.

(The witness confers with his counsel, Colonel Johnson.)

The CHAIRMAN. I would like to have the question read back. It seems to me there was something in the question that might be objectionable.

(The reporter read the question referred to as follows:)

"The CHAIRMAN. Well, you know that somebody has kept this man on, knowing he was a Communist, do you not?"

And you answered that question:

"No, sir."

Your answer was that you did not know that anyone had kept him on, knowing he was a Communist, is that right?

General ZWICKER. That's correct.

Mr. WILLIAMS. Now, when you made that answer, you did know, did you not, that in August of 1953, he had claimed the fifth amendment when asked about his Communist activities?

General ZWICKER. I must respectfully decline to answer that.

The CHAIRMAN. The question, you are basing that on a statement. I don't remember that being in evidence that he in August was known to be a Communist.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Is there anything before this committee that indicates that was the fact?

Mr. WILLIAMS. That is in the record, sir, many times, in both the Peress testimony, and in Senator McCarthy's direct testimony.

The CHAIRMAN. I do not recall it before this committee.

Mr. WILLIAMS. I am asking him.

The CHAIRMAN. I realize that you are asking him that question, but I thought probably in the very nature of the question itself you were stating something that has not been before this committee.

It is based on something that does not appear here in evidence.

Mr. WILLIAMS. I am sorry, but it does appear in evidence, Mr. Chairman. I don't mean to contradict you.

The CHAIRMAN. Can you direct me to the point where it is?

Mr. WILLIAMS. We have already offered in evidence, and it has been received, the testimony of Dr. Peress, and in Dr. Peress' testimony he said that he, in August of 1953, declined to answer questions when asked whether or not he was a member of the Communist Party in an Army investigation on that subject.

Senator ERVIN. Mr. Chairman?

The CHAIRMAN. Senator Ervin.

Senator ERVIN. I respectfully submit that the general, the witness is not charged with knowledge of everything that everybody has testified to.

Mr. WILLIAMS. Of course he is not, Senator, and nobody contends that he is.

What I am doing now is simply asking him one question: Whether or not, when he made that answer, he knew—he knew whether or not Peress had taken the fifth amendment in August of 1953, when he was asked whether he was a Communist.

That is all I am asking—if he knew it.

The CHAIRMAN. Is that the question you asked? I thought you asked him if he knew he was a Communist.

Mr. WILLIAMS. Oh, no, sir; I very clearly asked him if he knew, when he made this answer on February 18, 1954, if he knew that in August of 1953 Peress had taken the fifth amendment at his camp, Camp Kilmer, in an Army investigation, when he was asked, "Are you a member of the Communist Party?"

I am asking General Zwicker if he knew that when he made this answer, because I think it goes right to the candidness of this answer, which is very germane to this inquiry.

The CHAIRMAN. As I understand, you object on the ground that he is not permitted to answer that question?

Colonel JOHNSON. He is not permitted to answer it; no, sir.

Mr. WILLIAMS. Now, General, you answered the question, did you not, when you were asked whether or not you knew that Peress was kept on by someone in the Army with the knowledge he was a Communist?

You answered that, did you not? You answered that at page 146?

General ZWICKER. Yes, sir.

Mr. WILLIAMS. But you feel that you cannot answer the question when I ask you: Do you know whether or not he took the fifth amendment when he was asked if he was a Communist?

There is a difference between those two questions? One you can answer, and one is classified? Is that it?

General ZWICKER. That's correct.

Mr. WILLIAMS. Is that your interpretation of the Presidential order?

General ZWICKER. Yes, sir.

Mr. WILLIAMS. That you may answer when you are asked, "Do you know that somebody has kept this man on, knowing he was a Communist?" you may answer "No, sir," but then when you are asked "You know somebody has kept him on knowing that he has taken the fifth amendment," then you may not answer? I am just trying to get your position, General, so I will understand it in the course of my examination.

General ZWICKER. My position is this, sir. The question—"Well, you know that somebody has kept this man on knowing that he was a Communist, do you not?"

Mr. WILLIAMS. Yes.

General ZWICKER. To which I answered, "No, sir."

Mr. WILLIAMS. That is what is not classified, correct?

General ZWICKER. That's correct.

Mr. WILLIAMS. That did not seek classified information.

General, would you answer my last question?

General ZWICKER. Beg pardon?

Mr. WILLIAMS. That question, in your opinion, did not call for an opinion that gave classified information, is that right?

General ZWICKER. That's right. It had nothing—

Mr. WILLIAMS. It had nothing to do with the classified material?

General ZWICKER. It had nothing at all to do with any material that may have been in any personnel file of anyone.

Mr. WILLIAMS. I see; but when the next question comes:

"Do you know, sir, that this man was kept on when it was known that he had taken the fifth amendment on Communist activities?" that becomes classified?

General ZWICKER. It does.

The CHAIRMAN. Just a moment. Let him finish his answer.

General ZWICKER. I may be able to clarify that.

Mr. WILLIAMS. I wish you would because, frankly, I don't understand your position yet.

General ZWICKER. That last question may or may not refer to material which is a part of a personnel record of some person which I am not at liberty to divulge any part of that record. That is the basis, sir, on which I must decline to answer that particular question, Mr. Chairman.

The CHAIRMAN. We will reserve that one with the other. I will assume you want an order that he be directed to answer the question.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. We will reserve that with the other one.

Mr. WILLIAMS. Yes, sir.

Now, General, looking at this same page, page 146, I want to direct your attention now to a point about two-thirds of the way down, where you are asked the question:

You know that somebody signed or authorized an honorable discharge for this man, knowing that he was a fifth amendment Communist, do you not?

Then the answer:

General ZWICKER. I know that an honorable discharge was signed for the man.

Now, at the time that you made that answer, you knew, did you not, that he had claimed the fifth amendment when asked the precise question?

General ZWICKER. I knew that he had given testimony or failed to give testimony before Senator McCarthy and claimed the fifth amendment; yes.

Mr. WILLIAMS. But you didn't say that in response to the question you were asked; did you?

Senator ERVIN. Mr. Chairman, I respectfully submit that the question which was asked did not ask the general what his knowledge was, but what the knowledge of some third person was.

The CHAIRMAN. Let's get that question. I was unable to find it as counsel was reading it. You say it is on page 146?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. The question is:

The CHAIRMAN. You know that somebody has kept this man on knowing he was a Communist, do you not?

General ZWICKER. No, sir.

The CHAIRMAN. I am speaking now to counsel. I am trying to locate the exact question from the record.

Mr. WILLIAMS. The exact question, Mr. Chairman, appears two-thirds of the way down on page 146.

The question is:

You know that somebody signed or authorized an honorable discharge for this man, knowing he was a fifth-amendment Communist, do you not?

The answer was:

I know that an honorable discharge was signed for the man.

Now, my question is——

The CHAIRMAN. Just a moment. I am calling for this information so that I may properly make a ruling on it. I think Senator Ervin is correct in the interpretation of that question that somebody who signed or authorized an honorable discharge for the man is the man who knew he was a fifth-amendment Communist, that didn't call for the conclusion on the present witness as to whether or not he was.

Mr. WILLIAMS. Let's approach it this way: You knew that at this time, at the time you made this answer, did you not, General?

General ZWICKER. I respectfully decline to answer that question.

Colonel JOHNSON. May I ask that you clarify that question for the witness?

Are you talking about this particular question or the last one you asked?

Mr. WILLIAMS. I am asking General Zwicker if, at the time that he made this answer, he did not know that Peress had taken the fifth amendment when asked about his Communist activities.

General ZWICKER. That question is answered in the affirmative, Mr. Williams, to the effect that I knew that when he appeared before Senator McCarthy's committee, he had invoked the fifth amendment.

Mr. WILLIAMS. Well, now do you recall whether you knew at that time that he had invoked the fifth amendment when he was asked whether he was a Communist?

The CHAIRMAN. I think he has answered, but he may answer again. He said that with respect to whether General Zwicker knew he was a Communist, he said that he couldn't answer that, but your question is, as I interpret it, directed to him to answer whether somebody else knew that.

Mr. WILLIAMS. That is not my question. I think General Zwicker knows what my question is, don't you understand my question, General?

General ZWICKER. I thought I had answered it, Mr. Williams.

Mr. WILLIAMS. I asked you, General, whether you knew at the time you were giving these answers to which I now referred—I am now asking you whether you did not know that Major Peress had declined to answer questions about his Communist activities on the basis of the fifth amendment.

General ZWICKER. Yes, and I answered that in the affirmative just a moment ago that I did know that Major Peress had declined to answer questions, taking refuge in the fifth amendment when he appeared before Senator McCarthy's committee.

Mr. WILLIAMS. You knew that the day after Peress had appeared there, did you not?

General ZWICKER. I did.

Mr. WILLIAMS. Then, General, look at page 147, at the top there, where the chairman asked you:

And you knew generally that he had refused to tell whether he was a Communist, did you not?

You answered then:

I don't recall whether he refused to tell whether he was a Communist.

Was that an incorrect answer?

General ZWICKER. No, sir; it was not.

Mr. WILLIAMS. Is that consistent with the testimony that you are giving here now?

General ZWICKER. It is.

Mr. WILLIAMS. Did you not just tell us:

I don't recall whether he testified to tell whether he was a Communist.

Was that an incorrect answer?

General ZWICKER. No, sir; it was not.

Mr. WILLIAMS. Is that consistent with the testimony that you are giving here now?

General ZWICKER. It is.

Mr. WILLIAMS. Didn't you just tell us, sir, that you did know the day that Peress testified that he had refused to answer questions concerning his Communist activities?

General ZWICKER. I don't believe that was your question, sir, but my answer—

Mr. WILLIAMS. I just ask you, General, whether you knew whether or not you knew the day after Peress testified in executive session that he had refused to answer questions concerning his Communist activities, and I understood your clear answer to be, "Yes, I did know that."

Now, I have directed your attention to the question on page 147, of your testimony on page 148, and your answer at that time was, "I don't recall whether he refused to tell whether he was a Communist."

Now I am asking you which is your answer, the answer you just gave or both, with an explanation?

General ZWICKER. Personally, I don't see any difference between the statements.

Mr. WILLIAMS. You don't see any difference between not remembering whether a man said something at the time and stating that you clearly remember that he did say something at the time?

General ZWICKER. If you could state your question, I will try to give you an exact answer.

Mr. WILLIAMS. I will restate it, General.

I will try to do it as clearly as I can.

The record will show that I asked you just a few moments ago this question. I said to you:

General, did you know the day after Peress testified before Senator McCarthy's committee in executive session that he had refused to answer questions about his Communist activity?

And you said:

Yes; I knew.

Then I directed your attention to this question which had been propounded to you on February 18 of 1954, the day in question here, and at that time you said you did not recall whether he had refused to tell whether he was a Communist.

Now, my question to you, General, is this: Which is your position, did you or did you not know at the time and if both of your answers are correct, is there an explanation of the consistency?

General ZWICKER. If there is an inconsistency between—there seems to be an inconsistency. The statement on page 147 that "I don't recall whether he refused to tell whether he was a Communist"—"to tell whether he was a Communist"—is still correct; and I reiterate that I did know at that time, as I answered you earlier, that I was aware

that Major Peress did take the fifth amendment, or took refuge behind the fifth amendment, in failing to answer certain questions asked by Senator McCarthy's committee.

Mr. WILLIAMS. Well, you said, did you not, "I don't recall whether he refused to tell"—which was taking refuge under the fifth amendment, I understand—whether he was a Communist. You did not recall when you were testifying before Senator McCarthy about this man, when I asked you the question, and you responded, "Yes, I knew that he had taken the fifth amendment when asked whether he was a Communist."

Now, you do see inconsistency there, do you not?

General ZWICKER. No, sir; I do not.

Mr. WILLIAMS. You do not?

General ZWICKER. No, sir.

Mr. WILLIAMS. Well, let us pass, then, to the next question.

Now, I wanted to direct your attention to page 146.

Senator STENNIS. Mr. Williams, will you excuse me just a minute, before we move from that point?

Mr. Chairman, the remark is made here that the questions are clear, and that the witness understands the questions. I understand this will be read by many Senators and before we leave the subject, I think it best for all parties—I want to say that the question has not always been clear to me——

Mr. WILLIAMS. All right.

Senator STENNIS. As they have been bandied back and forth—without anyone's fault. It has not been clear just what was intended to be asked at the time; and, without its being Mr. Williams' fault at all—he is an excellent lawyer—he has gone from one question to another in the original McCarthy hearing very rapidly, and it was difficult for me to follow.

Mr. WILLIAMS. I will adopt your suggestion, certainly, Senator, and go more slowly; and I certainly want General Zwicker to take all the time that he wants to take before answering these questions, and to consult with counsel, if he wants to. I certainly have that intention.

Senator STENNIS. I am sure you do.

Mr. WILLIAMS. General, I want to call your attention now, if I may, to page 146. I want to direct your attention to the last quarter of that page. I hope the committee follows. Do you have that, sir?

General ZWICKER. I do.

Mr. WILLIAMS. Now there the chairman says:

The day the honorable discharge was signed, were you aware of the fact that he had appeared before our committee?

General ZWICKER. I was.

Are you following me there, General?

General ZWICKER. I do.

Mr. WILLIAMS. I continue:

The CHAIRMAN. And had refused to answer certain questions?

General ZWICKER. No, sir; not specifically on answering any questions. I knew that he had appeared before your committee.

Now, when you gave those answers, General, were you not telling the chairman that you did not know that Peress had refused to answer questions?

General ZWICKER. No, sir.

MR. WILLIAMS. You were not? What was in your mind when you made those answers, sir—so that we will have this clear for the purpose of the record.

General ZWICKER. The chairman, if you will follow me, said:

And had refused to answer certain questions?

The terminology "certain" delimits questions. That means specifically a question or certain questions. My answer was:

No, sir; not specifically on answering any questions. I knew that he had appeared before your committee.

I was not at that time, through the reading of the press releases, at all conversant with any specific questions and answers that had been given or asked.

MR. WILLIAMS. So that when you made that answer, you intended to say, did you, that you did not know the exact phraseology of the questions that he refused to answer? Is that what you mean?

General ZWICKER. If I understand you correct, that is right, Mr. Williams. I did not study the questions or the answers to the extent where I would remember any question asked, or any specific question answered.

MR. WILLIAMS. Well, you did know, did you not, that he had refused to answer questions?

General ZWICKER. I did.

MR. WILLIAMS. You did? But, when the chairman asked you whether or not you knew he had refused to answer certain questions, you said:

No; I did not know he refused to answer specific questions.

and you were delimiting it to mean that you did not know the exact questions he refused to answer; is that what you meant?

General ZWICKER. I believe that is correct.

MR. WILLIAMS. Now, you did know at this time that you made these answers that he had taken refuge in the fifth amendment, did you not?

General ZWICKER. I did.

MR. WILLIAMS. And you did know that he took refuge when the questions related to communism?

General ZWICKER. Specifically related to communism, I don't know at that time whether I knew that that was specifically the case.

I can well imagine that that must have been the case.

MR. WILLIAMS. Is it your testimony now, General, that you did not know then that his refusal to answer the questions was related to questions on communism?

In other words, is it your testimony now that although you knew he refused to answer questions, you did not know that those questions related to communism?

General ZWICKER. I think that my testimony will indicate what I said at that time, sir.

MR. WILLIAMS. Well, let me read what you said and see if this is your position.

At page 146 the chairman asked you this question:

The day the honorable discharge was signed, were you aware of the fact that he had appeared before our committee?

General ZWICKER. I was.

The CHAIRMAN. And had refused to answer certain questions?

General ZWICKER. No, sir; not specifically on answering any questions. I knew that he had appeared before your committee.

Now, that is the answer that you gave on page 146.

Then you were asked, at page 147, directly across the page:

The CHAIRMAN. Did you know that he refused to answer questions about his Communist activities?

And you said:

Specifically, I don't believe so.

And then, at page 148, at the top of the page, the second paragraph of the chairman's question:

Now, is it your testimony now that at the time you read the stories about Major Peress that you did not know that he had refused to answer questions before this committee about his Communist activities?

And you said:

I am sure I had that impression.

Is that correct, General?

General ZWICKER. That is correct.

Mr. WILLIAMS. But you did not respond to that question as to what knowledge you did have for some two pages.

Is that because you were confused about the nature of the contents of the question, sir?

General ZWICKER. If that is your interpretation.

Mr. WILLIAMS. Do you see there the inconsistency in your position today?

General ZWICKER. No; I don't see any inconsistency. I can see where, looking over this testimony, that certainly persons reading it might be confused as to the intent of a questioner, or the intent of an answerer in being specific in answering those questions.

Mr. WILLIAMS. Yes.

Now, the fact of the matter is, getting away from these questions entirely for a moment, you had read the press on January 31 and February 1, in which there was an account of Peress' going before the Permanent Subcommittee on Investigations and declining to answer the question as to his Communist activities.

You had read that?

General ZWICKER. I had read the press release.

Mr. WILLIAMS. This was a man in your command and, of course, you had an interest in the case because it had been called to your attention some 6 months before, and he was still on active duty there.

General ZWICKER. He was there.

Mr. WILLIAMS. And you had acute interest in what Major Peress did, since you had the case before you and there was an investigation proceeding?

General ZWICKER. Yes; I was interested in that.

Mr. WILLIAMS. So you did read it in the press; did you not?

General ZWICKER. Yes.

Mr. WILLIAMS. That is right. You knew that Major Peress had appeared before this committee and was asked whether or not he was a Communist and did decline to answer.

General ZWICKER. I read all the press releases that were made available.

Mr. WILLIAMS. As a matter of fact, you had had a conversation with Major Peress on February 1, at the time that he came to you after appearing before the subcommittee; is that right?

General ZWICKER. I did.

Mr. WILLIAMS. At that time did he ask you to conduct an investigation of him and his activities?

General ZWICKER. I believe he did request something of that nature.

Mr. WILLIAMS. At the time he came before you, he had already been before the subcommittee?

General ZWICKER. That is correct.

Mr. WILLIAMS. And you already knew at that time that he had taken refuge in the fifth amendment when asked about communism?

General ZWICKER. I knew he had taken refuge in the fifth amendment.

Mr. WILLIAMS. And he came to you and asked you to investigate?

General ZWICKER. No; I don't recall that he asked for me to investigate him. I think he requested that his case be investigated by our headquarters.

Mr. WILLIAMS. In other words, he did not ask you to investigate him. He asked you to investigate his case?

General ZWICKER. I will concede that that is the same thing.

Mr. WILLIAMS. He asked you to investigate his case?

General ZWICKER. That is right.

Mr. WILLIAMS. And that was the purpose of his coming to you February 1, 1954?

General ZWICKER. Not his entire purpose.

Mr. WILLIAMS. Did he also ask you for a discharge?

General ZWICKER. He did.

Mr. WILLIAMS. That was the day before he was given the discharge?

General ZWICKER. That is correct.

Mr. WILLIAMS. Did you tell him that you would, in fact, conduct an investigation of his case?

General ZWICKER. I did not.

Mr. WILLIAMS. You proceeded to give him his discharge the following day, did you not?

General ZWICKER. I did.

The CHAIRMAN. I wonder if you could tell us why you gave the discharge the following day?

General ZWICKER. In accordance with the orders, Senator Watkins, which required me to discharge this man at his own request and not later than 90 days.

The CHAIRMAN. Did he make the request?

General ZWICKER. Yes, sir; he did.

The CHAIRMAN. What did he say?

General ZWICKER. He made two requests for discharge, Mr. Chairman. The first request was to the effect that he be discharged 60 days after receipt of the order, which would have made it the last day of March 1954.

Immediately subsequent to his appearance before Senator McCarthy's meeting, and the morning of February 1, 1954, he came to me in my office and requested then that he be immediately discharged.

I had no alternative, in accordance with the order which is in your hands, but complying with his request for an immediate discharge.

The CHAIRMAN. And that is what you told him you would do?

General ZWICKER. That is right, sir.

The CHAIRMAN. And did you follow through and immediately discharge him?

General ZWICKER. I did. He was discharged on the afternoon of the 2d of February 1954.

The CHAIRMAN. You may proceed.

Mr. WILLIAMS. Now——

The CHAIRMAN. Just a moment. Senator Johnson, do you have a question?

Senator JOHNSON. Yes, Mr. Chairman.

The CHAIRMAN. You may proceed.

Senator JOHNSON. General, what reason did he give for changing his mind about being discharged 60 days later or the next day?

General ZWICKER. He gave no reason, Senator.

Senator JOHNSON. And you did not ask him?

General ZWICKER. No. I thought I knew the reason, but I thought it was quite apparent to me, and I thought it was quite apparent to him also as to why he wished to expedite his discharge, but he never stated to me the reason why he wished to expedite his discharge.

Senator JOHNSON. What did you think his reasons were?

General ZWICKER. Because of his appearance before Senator McCarthy's subcommittee.

The CHAIRMAN. Proceed.

Mr. WILLIAMS. Now, you produced here this morning, General Zwickler, a copy of the order pursuant to which you are acting. As I read it—it is dated January 18, 1954—in the first paragraph, it states:

It is desired that Major Irving Peress be relieved from active duty and honorably discharged from the Army at the earliest practicable date depending on officers' desires, but in any event not later than 90 days from receipt of this letter.

That is in paragraph 1.

Now, down to paragraph 5—

Have you got a copy of it before you?

General ZWICKER. Yes, I have.

Mr. WILLIAMS. It says:

A prompt report will be made to this office in the event action cannot be taken without undue delay.

Now, did you ever make a report to this office when it came to your attention that Major Peress had taken the fifth amendment before the subcommittee on January 30, 1954?

General ZWICKER. Not to this office. That is not the chain of command.

Mr. WILLIAMS. Did you discuss this case with anyone?

General ZWICKER. After he had requested change?

Mr. WILLIAMS. Yes, sir.

General ZWICKER. In his discharge?

Mr. WILLIAMS. Yes, sir.

General ZWICKER. I did.

Mr. WILLIAMS. Well, now, General, do you recall when you appeared on February 18 and testified in Foley Square, in New York,

in open session, you were asked by Mr. Cohn, who, as you said, conducted himself properly, in relationship to the Peress discharge:

Who did you talk to? You talked to somebody?

General ZWICKER. No; I did not.

General ZWICKER. That's correct.

Now, please get your question in line and let's stick to——

Mr. WILLIAMS. All right.

General ZWICKER. Exactly what you want.

Mr. WILLIAMS. All right, let's read the whole colloquy so there won't be any question in your mind, or the committee's mind.

I am looking for an explanation from you.

Page 148:

Who ordered his discharge?

General ZWICKER. The Department of the Army.

Who——

General ZWICKER. Just a minute, please, until I find that place.

Mr. WILLIAMS. All right, sir.

Who ordered his discharge?

General ZWICKER. The Department of the Army.

The CHAIRMAN. The committee would like to know, too, where you are reading from.

Mr. WILLIAMS. From the last part of page 148.

Let me begin with this question from the Chair:

Were you aware that he was being given a discharge on February 2? In other words, the day he was discharged, were you aware of it?

General ZWICKER. Yes; yes, sir.

The CHAIRMAN. Who ordered his discharge?

General ZWICKER. The Department of the Army.

The CHAIRMAN. Who in the Department?

General ZWICKER. That I can't answer.

Mr. COHN. That isn't a security matter.

General ZWICKER. No. I don't know. Excuse me.

Mr. COHN. Who did you talk to? You talked to somebody?

General ZWICKER. No; I did not.

General ZWICKER. I am perfectly happy to answer that, sir.

You are referring to this order. I received no——

The CHAIRMAN. Just a minute. What order do you mean? When you say "this order"——

General ZWICKER. I am sorry, sir.

The CHAIRMAN. That does not mean anything in the record.

General ZWICKER. That is the order of release from active duty and separation from the service.

The Department of the Army.

Who ordered his discharge?

The Department of the Army.

That is this order, sir.

Mr. WILLIAMS. Now, he received from you, did he not, on February 2, a signed discharge?

General ZWICKER. I am sorry. What was the question, please?

Mr. WILLIAMS. He wasn't discharged until February 2, was he?

General ZWICKER. That's right.

Mr. WILLIAMS. 1954?

General ZWICKER. That's right.

Mr. WILLIAMS. At that time you handled his discharge, did you not?

General ZWICKER. My headquarters, yes, sir.

Mr. WILLIAMS. Your headquarters. In other words, you discharged him?

General ZWICKER. That is right.

Mr. WILLIAMS. Did you not?

General ZWICKER. I did.

Mr. WILLIAMS. That was what the chairman was asking you about when he directed your attention to February 2, was it not?

General ZWICKER. Yes. I discharged him on the basis of this order, this Army order.

Mr. WILLIAMS. Now, directing your attention to February 2——

General ZWICKER. All right.

Mr. WILLIAMS. And what happened around that time, you were asked whom you talked to in the Department of the Army, were you not?

General ZWICKER. Read specifically your quote there, please.

Mr. WILLIAMS (reading):

Were you aware that he was being given a discharge on February 2? In other words, the day he was discharged, were you aware of it?

General ZWICKER. Yes; yes, sir.

General ZWICKER. Correct.

Mr. WILLIAMS. Now, then, you are asked, are you not:

Who ordered his discharge?

You said:

The Department of the Army.

Who in the Department?

That I can't answer.

Mr. Cohn observes:

That isn't a security matter.

General ZWICKER. No. I don't know. Excuse me.

Mr. COHN. Who did you talk to? You talked to somebody?

General ZWICKER. No; I did not.

Now, when you made that answer, were you referring to something back on January 18?

General ZWICKER. No, sir; I was referring to exactly the way the question was asked, to the Department of the Army, or anyone connected with the headquarters in Washington.

Mr. WILLIAMS. But your testimony is you did talk to somebody on February 1; is that right, about this discharge?

General ZWICKER. Yes, sir; and I will be very happy to clear the whole matter for you——

Mr. WILLIAMS. All right.

General ZWICKER. In very short order.

Mr. WILLIAMS. That is what we want, sir.

General ZWICKER. I called the Chief of Staff, First Army, who is my immediate superior, and informed him that I was going to comply with this directive and discharge Peress because he had so requested as soon as possible.

That is the only conversation that I had with anybody.

Mr. WILLIAMS. Who was your Chief of Staff?

General ZWICKER. At that time it was General Murphy.

Mr. WILLIAMS. You called him on February 1?

General ZWICKER. On February 1.

Mr. WILLIAMS. You don't have any question about your calling him on that date in your mind?

General ZWICKER. No, sir.

Mr. WILLIAMS. Let me direct your attention, General, to your testimony on February 18, page 154. At that time, when you made that answer—let me direct your attention specifically:

He appeared before the committee on Saturday. On Monday or Tuesday, did you speak to anybody in the Department of the Army in Washington, telephonically, about the Peress case? On Monday or Tuesday?

Let me think a minute.

It is possible that I called First Army to inform them that Peress had changed his mind and desired a discharge as soon as possible.

Now, is that the conversation you had with Murphy?

General ZWICKER. May I have just a moment to find that, please, sir?

The CHAIRMAN. Is that page 154, Mr. Williams?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. What part of the page?

I don't find it.

Mr. WILLIAMS. Down at the bottom, Mr. Chairman.

The CHAIRMAN. We are not as familiar with it as you are.

General ZWICKER. That is correct.

Mr. WILLIAMS. Is that the conversation you had with General Gurney?

General ZWICKER. I follow you.

Mr. WILLIAMS. I am asking you a question.

General ZWICKER. Yes, sir.

Mr. WILLIAMS. Are you relating here the conversation you had with Gurney?

General ZWICKER. I was mistaken in my testimony. In the first place, I did not say "General Gurney" because he is not a general, and I was mistaken in thinking I had called Colonel Gurney, who was Deputy Chief of Staff. It was, in fact, the Chief of Staff, General Murphy, whom I talked to.

Mr. WILLIAMS. I see.

So, when you said you had talked to General Gurney about it you were in error?

General ZWICKER. I was.

Mr. WILLIAMS. Now, have you checked up on this since your appearance?

General ZWICKER. Yes, sir.

Mr. WILLIAMS. And you have confirmed with General Murphy that you talked with him?

General ZWICKER. That's right.

Mr. WILLIAMS. So that when you gave this testimony on February 18, in which you stated that your testimony was with General Gurney, that was in error?

General ZWICKER. That's correct.

The CHAIRMAN. Mr. Williams, I imagine you may have further questions of this witness. I think it is about time we should take our recess.

The committee will be in recess until 2 p. m.

(Whereupon, at 12:25 p. m., the hearing was recessed, to reconvene at 2 p. m., of the same day.)

AFTERNOON SESSION

(The hearing was resumed at 2:12 p. m.)

The CHAIRMAN. The committee will resume session.

Mr. Williams, you may resume your examination.

Mr. WILLIAMS. Thank you, sir.

General ZWICKER, just before the recess this morning, I had directed your attention to page 148 of the printed record and I had asked you whether or not you said, "No, I didn't talk to anyone," you meant with relationship to the February 2 action which was taken and you indicated that you did not mean that; you meant you didn't talk to anyone with relationship to the January 18 matter; is that correct?

General ZWICKER. January 18.

Mr. WILLIAMS. January 18 is the day on which the order authorizing you to honorably discharge Irving Peress is dated?

General ZWICKER. I understand.

Mr. WILLIAMS. Now, I understand that when this series of questions at page 148 was asked of you, namely, who did you talk to, you talked to somebody? And you answered, no, I did not—you had reference to January 18 order?

General ZWICKER. That's correct.

Mr. WILLIAMS. You had reference to the January 18 matter notwithstanding the remarks, that the chairman's remarks 2 or 3 questions previously were directed to the February 2 matter; is that correct?

General ZWICKER. Would you point out specifically in your remarks, please?

Mr. WILLIAMS. Were you aware that he was being given a discharge on February 2? In other words, the day he was discharged, were you aware of it—just two-thirds of the way down.

General ZWICKER. I find that.

Mr. WILLIAMS. You thought that you were being interrogated about the January 18 order when you said, no, you did not talk to anyone, is that right?

General ZWICKER. That's correct, yes, sir.

Mr. WILLIAMS. Then, over at page 156—correction, 154—you related in response to a question:

It is possible I called First Army to inform them that Peress had changed his mind and desired a discharge as soon as possible.

Mr. Cohn then asked you:

Who would you have told in the First Army? Who would you call? G2, or General Burruss?

You knew at this time, I take it, General, that Mr. Cohn was asking you about what you did on February 1 or 2.

General ZWICKER. That's correct.

Mr. WILLIAMS. You responded:

I don't think in that case I would call General Burruss.

Mr. Cohn said:

General Seabree?

General ZWICKER. No. It would have been G1, or Deputy Chief of Staff.

And then Mr. Cohn said:

Who is that?

You responded:

General Gurney.

Then Mr. Cohn said:

You don't remember which one it was?

And you, General Zwicker, said:

I don't recall that I called.

Didn't you remember that you had made a call to General Murphy when you gave that answer?

General ZWICKER. I did not remember specifically at that time.

Mr. WILLIAMS. When did your recollection improve on that, General?

General ZWICKER. My recollection did not improve.

The fact of the matter is, if you will permit me to finish my answer, that General Murphy called me later and said:

It was I whom you called at First Army Headquarters—
and I said—

Yes, Jack, that's correct.

I did not speak to Colonel Gurney.

Mr. WILLIAMS. Then, that is precisely what my question is directed to, General. I am anxious to know when your recollection was refreshed to the extent that you remembered that you did talk to General Murphy about this.

General ZWICKER. Well, it was——

Mr. WILLIAMS. I say, when, sir?

General ZWICKER. Within 2 or 3 days, I would say, following your February 18.

Mr. WILLIAMS. In other words——

General ZWICKER. Pardon me; 2 or 3 days following February 2. Excuse me.

Mr. WILLIAMS. Two or three days following February 2?

General ZWICKER. Yes, sir.

Mr. WILLIAMS. On that occasion, on February 4 or 5, General Murphy called you and you said, "General, you called me regarding the Irving Peress case"; is that right?

General ZWICKER. That is substantially correct; yes, sir.

Mr. WILLIAMS. That was 2 weeks before you even appeared before the McCarthy committee.

Why did he call you and undertake to refresh your recollection on something that had taken place only 3 days before?

General ZWICKER. I am not sure of the date that the conversation between General Murphy and I took place, at which time he informed me and refreshed my memory to exactly whom I had spoken to at First Army.

It may have been 2 or 3 days, Mr. Williams. It may have been at a later date.

Mr. WILLIAMS. But at any rate, you fix it before your appearance before the committee?

General ZWICKER. I believe so; yes, sir.

Mr. WILLIAMS. Then that raised the question in my mind, and I hope you can help us on this, sir, How did General Murphy know at that time that your recollection had faded with respect to your conversation with him regarding the Peress case?

General ZWICKER. I don't know.

Mr. WILLIAMS. In other words, he just called you and said, "Remember, General, you talked to me about the Peress case," and that was before you testified in the McCarthy case, and that was before there was any evidence that your recollection had failed on this subject.

Is that correct?

General ZWICKER. It may be, Mr. Williams.

I intimated just a moment ago that the timing as to when General Murphy called me, or I was aware it was General Murphy, may have been subsequent to the eighteenth hearing.

I am not positive as to whether it was before the hearing, or after the hearing. I believe that I could find out.

Mr. WILLIAMS. But you did have a conversation with General Murphy wherein your recollection was refreshed about this conversation that you had theretofore with him.

General ZWICKER. It was.

Mr. WILLIAMS. Now, how was it that you did not remember this, General, when Mr. Cohn asked you about it on the 18th?

General ZWICKER. That, I can't answer.

Mr. WILLIAMS. In other words, you are just not able to help us on why you did not disclose that you had conversed with General Murphy at that time other than to say you just didn't remember?

General ZWICKER. That's correct. I was not clear at the time I was answering Mr. Cohn's questions, in my mind, as to whom I had talked with at First Army.

Mr. WILLIAMS. The fact of the matter is, you told Mr. Cohn that you did not recall that you had even called?

General ZWICKER. I think——

Mr. WILLIAMS. Anyone?

General ZWICKER. I think, if you will read the few lines prior to that, that I said that I had called someone and I thought it was as quoted here, General Gurney.

Mr. WILLIAMS. Let's read that, General, so we will see the full text of this because I think it is important, as you know:

Mr. COHN. Who would you have told in the First Army? Who would you call? G-2 or General Burrese?

General ZWICKER. I don't think in that case I would call General Burrese.

Mr. COHN. General Seabree?

General ZWICKER. No. It would have been G-1 or Deputy Chief of Staff.

Mr. COHN. Who is that?

General ZWICKER. General Gurney.

Mr. COHN. You don't remember which one it was?

General ZWICKER. I don't recall that I called.

Now, was that your best recollection at that time?

General ZWICKER. That is my best recollection.

Mr. WILLIAMS. In other words, at that time you did not recall that you had talked to General Murphy, and you also did not recall that you had called anyone?

General ZWICKER. That is the way it appears in the record, and that is the way—that's it.

Mr. WILLIAMS. Now, coming to this order of January 18, 1954, sir, about which there was so much conversation this morning, in that order—and I direct your attention, General, to the last sentence of paragraph 5, which reads as follows:

A prompt report will be made to this office in the event action cannot be taken without undue delay.

General ZWICKER. Right.

Mr. WILLIAMS. Now, that indicated to you that if anything arose which appeared to call for a delay in the discharge of Irving Peress, you should call the Adjutant General's office, did it not?

General ZWICKER. It meant just what it said, sir—a prompt report would be made to this office, "in the event action cannot be taken without undue delay"—action.

Mr. WILLIAMS. Did that suggest to you, General, that in the event some incident arose which appeared to be a reason precluding you from taking action, you should call the Adjutant General?

General ZWICKER. It did not occur to me that I would be contravening in any way any of the paragraphs, of 1, 2, 3, or 4 of that order.

Mr. WILLIAMS. I am asking you about paragraph 5, now.

General ZWICKER. That is part of my answer to your question, sir.

Mr. WILLIAMS. Well, paragraph 5 is part of the answer, too, is it not?

General ZWICKER. That is correct.

Mr. WILLIAMS. And that is just as effective as the first, isn't it?

General ZWICKER. That is correct.

Mr. WILLIAMS. And that tells you to call the Adjutant General if anything arises precluding your action, doesn't it, sir?

General ZWICKER. "In the event action cannot be taken without undue delay." That is correct.

Mr. WILLIAMS. Well, now, when Irving Peress came to you, sir, on February 1, and asked you to investigate him, did that occur to you as a reason to get in touch with The Adjutant General and discuss with him whether or not Peress should be discharged?

General ZWICKER. No, sir.

Mr. WILLIAMS. When a Senator of the United States, as chairman of the Government Operations Committee, wrote the Secretary of the Army and suggested that this man be court-martialed, did that suggest itself to you, sir, as a reason why you might call The Adjutant General and ask him whether you should discharge Irving Peress the next day?

General ZWICKER. I received no such communication, and no such communication from any higher authority.

Mr. WILLIAMS. You knew, did you not, sir, on February 1, that there had been a request made by the chairman of the Senate committee, that a man in your command be court-martialed?

General ZWICKER. I was aware that the Senate—that the chairman of the committee had been in contact, and had written to or conversed with Secretary of the Army relative to this person; yes.

Mr. WILLIAMS. And you knew, did you not, General, that he had asked, and that it was widely reported in the press, for Irving Peress's court-martial; did you not?

General ZWICKER. I am not certain that I did.

Mr. WILLIAMS. Well, now, you read everything in the press?

General ZWICKER. No; I did not read everything in the press.

Mr. WILLIAMS. Well, you read the story about Irving Peress in the press; did you not?

General ZWICKER. I did.

Mr. WILLIAMS. And you were aware of the press accounts of his testimony on January 30, 1954, and the action taken by the chairman of the committee after his testimony; were you not?

General ZWICKER. Yes.

Mr. WILLIAMS. And you knew, did you not, that there had been a request by the chairman of the committee to the Secretary of the Army that court-martial proceedings be instituted? You knew that; didn't you?

General ZWICKER. I imagine that I must have; yes.

Mr. WILLIAMS. Yes; you must have heard about it.

Well, now, didn't it occur to you, General, on February 1, 1954, that maybe you should call The Adjutant General's Office and discuss with him the fact that a court-martial had been requested of one of the men in your command, before you proceeded to discharge him on February 2?

General ZWICKER. I would like to correct you on one statement. I did not hurry anyone's discharge at any time.

Mr. WILLIAMS. You discharged him the next day; did you not?

General ZWICKER. At his request, as delineated specifically in this order.

Mr. WILLIAMS. But you did not call The Adjutant General, as delineated specifically in this order, in paragraph 5, in the event that anything should arise?

General ZWICKER. I—

Mr. WILLIAMS. Just let me finish this question, please, sir. In the event anything should arise, which should be cause for delaying the action.

General ZWICKER. May I call your attention—just a minute.

Colonel JOHNSON. If the Chair please, the difficulty comes in counsel's paraphrasing the statement. I think he should be required to take the statement in context.

Mr. WILLIAMS. I will adopt your suggestion, Colonel. I shall read what appears in my copy:

A prompt report will be made to this office in the event that action cannot be taken without undue delay.

General ZWICKER. Yes, sir.

Mr. WILLIAMS. Now, did you communicate at any time on February 1 or 2 with that office?

General ZWICKER. I did not, for this reason. This order is addressed, not to me; it is addressed to the commanding general, First Army; and any reply of that nature would of necessity would have to be made by the commanding general of the First Army who was located at Governors Island, and who was my immediate superior, and not directly by me.

Mr. WILLIAMS. So that is it your opinion, General Zwickler, as commanding general of Camp Kilmer, that there was nothing you could do in the face of this order except to give Peress his discharge on February 2?

General ZWICKER. That is correct.

Mr. WILLIAMS. Then, General, why did you testify on February 18 that if you had received the report the night before he was to be discharged that he had stolen \$50; that he would not have been discharged? Why did you testify that way on February 18?

General ZWICKER. If you can show me that in the testimony, I would appreciate it.

Mr. WILLIAMS. Yes, sir; on page 150, the first quarter of the page where the chairman said:

Let us say he went out and stole \$50 the night before.

General ZWICKER. He wouldn't have been discharged.

General ZWICKER. I am trying to find that page, Mr. Williams.

Mr. WILLIAMS. It is in the top quarter of page 150. I will come over and point it out, if you wish.

General ZWICKER. I think I am with you, Mr. Williams. Your question, please?

Mr. WILLIAMS. If you are with me, will you answer the question, please?

General ZWICKER. May I have it again, please?

Mr. WILLIAMS. Will you read it back to him, sir?

I will restate it if you wish.

General ZWICKER. That will be satisfactory.

Mr. WILLIAMS. I said to you, General, if you were powerless to act, sir, under this order of January 18, as you have just indicated to us, why did you testify on February 18 that if a report had come to you that Peress had gone out and stolen \$50 the night before, he wouldn't have been discharged?

General ZWICKER. Because whoever it may have been that had stolen the \$50, or any other hypothetical question such as that, was still under my jurisdiction for an offense that had not been thoroughly evaluated, passed on, and orders issued relative to his disposition.

I would then have, by all means, taken steps to see whether or not the \$50 was stolen was a fact and would certainly not have separated him, or anyone else until this was definitely established as to his guilt or innocence.

In this case, the case cited by this order, the reasons for which Major Peress was discharged had been completely digested by the authority superior to mine.

They had determined that he was to be discharged, not me.

Mr. WILLIAMS. Now, General, as I understand it, this order, then, was not an ironclad order which blocked you from the exercise of your sound discretion?

General ZWICKER. It was.

Mr. WILLIAMS. Didn't you just say, sir, that if a matter arose which had not been thoroughly investigated in your opinion, you could hold up the man's discharge?

General ZWICKER. I will qualify my statement, Mr. Williams.

It was in every respect covered by the order, and for every purpose for which this order was written.

Mr. WILLIAMS. Now, the fact that the chairman of a Senate committee called for the court-martial of Peress was not, in your opinion, the basis for calling the Attorney General's Office and discussing the applicability of paragraph 5: is that right?

(At this point General Zwicker conferred with his counsel.)

General ZWICKER. I would have to answer that, Mr. Williams, by stating, or restating, that I did call the representative of the commanding general, First Army, to whom this order was addressed, and stated to him that I was about to separate Major Peress under the provisions of this order, which had been passed down to me.

Mr. WILLIAMS. Now, General, you just made a statement that excites my interest. I want to ask you about it. You said that all of the information on Irving Peress had been investigated and had been thoroughly digested.

On February 18, directing your attention to page 152 of the record, the second quarter of the way down, beginning with "General Zwicker," you said:

Because, Mr. Senator, any information that appeared in the press or any releases was well known to me and well known to plenty of other people long prior to the time that you ever called this man for investigation, and there were no facts or no allegations, nothing presented from the time that he appeared before your first investigation that was not apparent prior to that time.

And the chairman asked you:

In other words, as you sat here this morning and listened to the testimony, you heard nothing new?

Mr. COHN. Nothing substantially new?

General ZWICKER. I don't believe so.

The CHAIRMAN. So that all of these facts were known at the time he was ordered to receive an honorable discharge?

General ZWICKER. I believe they are all on record; yes, sir.

Now, General, that morning of February 18, you had sat in that Foley Square courtroom and you had heard the testimony of a policewoman named Ruth Eagle, had you not?

General ZWICKER. Yes; I had.

Mr. WILLIAMS. And she had identified Irving Peress as a section leader of the Communist Party, had she not?

General ZWICKER. She so testified.

Mr. WILLIAMS. And then you heard the testimony of Irving Peress, had you not?

General ZWICKER. Yes, sir.

Mr. WILLIAMS. And you had heard him take the fifth amendment each time he was asked anything relating to Communist activities, had you not?

General ZWICKER. Correct.

Mr. WILLIAMS. Your testimony was that afternoon that all of these things were known before the discharge was ordered for Peress?

General ZWICKER. My testimony then, and it will remain unchanged now, is exactly as it appears in the transcript.

Mr. WILLIAMS. So, then, General, I assume that it would remain exactly as it appears in the transcript when you said, at page 151, that you were never officially informed by anyone that Peress was a part of the Communist conspiracy, would it not?

The CHAIRMAN. Where is that?

Mr. WILLIAMS. It is about one-third of the way down, Mr. Chairman.

General ZWICKER. That is what my testimony indicates; yes, sir.

Mr. WILLIAMS. Well, now, General, didn't you testify at page 152 that all of the facts that you had heard, all of the facts that you

had heard on the morning of February 18 were of record long before the Peress decision was made, and wasn't it of record that morning that Peress was named as a section leader in the Communist conspiracy, and didn't you also answer that day, General, that you were never officially informed by anyone that he was part of the Communist conspiracy?

The CHAIRMAN. Mr. Williams, I notice so many of your questions have more than one question contained in them. Why not ask one question at a time?

It is difficult to follow and I think the witness cannot answer you properly if you put several questions in one.

Mr. WILLIAMS. Mr. Chairman, if I am guilty of that offense, I shall attempt not to repeat it, but what I am trying to do is to point out to the general portions of his testimony on February 18 which appear to conflict with each other, and I don't know how to do that without introducing two prior questions, questions of February 18, and ask him to explain the apparent inconsistency in them.

General ZWICKER. Now, Mr. Williams, you will recall the testimony which you have reread from the transcript that I said:

Mr. Senator, any information that appeared in the press or any releases was well known to me, and well known to plenty of other people long prior to the time.

and so forth.

You will also note that I said:

I believe they are all on record; yes, sir.

My intent there, of course, was not to include, as a fact, any allegations that have been made by persons that morning, as obviously I would have no way of knowing whether or not any allegation was made against Major Peress, during the morning session, was, in fact, correct.

Mr. WILLIAMS. Then why did you say they were?

General ZWICKER. Pardon?

Mr. WILLIAMS. Then why did you say they were?

General ZWICKER. I don't believe that I did.

Mr. WILLIAMS. Let us look at the record, then, General.

The CHAIRMAN. In other words, as you sat here this morning and listened to the testimony, you heard nothing new?

Mr. COHN. Nothing substantially new?

General ZWICKER. I don't believe so.

General ZWICKER. That is correct.

Mr. WILLIAMS (reading):

The CHAIRMAN. So that all of these facts were known at the time he was ordered to receive an honorable discharge?

General ZWICKER. I believe they are all on record; yes, sir.

Now, didn't you say, sir, on February 18, that, in your best opinion, everything you heard that morning was of record in the Army files at the time the decision was made?

(At this point General Zwicker conferred with Colonel Johnson.)

Colonel JOHNSON. Mr. Chairman, I wonder if I could request counsel to rephrase his question. I think we can answer it, but the way it is worded now, it refers to the files, concerning which General Zwicker cannot testify.

I think that counsel can no doubt get the answer that he wants without going into that, if he could rephrase the question.

Mr. WILLIAMS. I think I phrased the question perfectly properly, Mr. Chairman.

He has already testified concerning what is of record here on February 18. I have asked him now whether or not——

Colonel JOHNSON. You are talking now about what is of file and what is of record, and what is of record and what is of files may be two different things.

Mr. WILLIAMS. Well, would you please explain that to me, Colonel? I am not versed in these matters and I don't understand.

Colonel JOHNSON. I suppose——

Mr. WILLIAMS. I don't understand what is not in the files that is on the record, and what is on the record that is not in the files in a matter such as this.

Now, I may be able to clear up my question if you tell me what you have in mind.

Colonel JOHNSON. If you are referring by files to military personnel files, then General Zwicker cannot testify concerning the contents of those files.

Mr. WILLIAMS. Then I will stick to the record.

The CHAIRMAN. Let him finish.

Have you finished?

Colonel JOHNSON. I think that——

Mr. WILLIAMS. I will stick to the record.

Question:

So that all of these facts were known at the time he was ordered to receive an honorable discharge?

General ZWICKER. I believe they are all on record; yes, sir.

Now, I ask you this question, General, and I am going to ask you to help us in this matter, and please take all the time you need:

If all these things were of record, if all of these matters that Ruth Eagle testified to were of record, why did you say you never had been officially informed by anyone that Peress was a part of the Communist conspiracy?

General ZWICKER. Mr. Williams, I don't believe that anywhere you will find specifically that I said what was testified to by Miss Eagle, or anyone else in the morning, was a matter of record, but I believe that is not a material point.

Mr. WILLIAMS. Well, I think——

The CHAIRMAN. Let him finish.

Did you finish?

General ZWICKER. Beg pardon?

The CHAIRMAN. You can finish your answer.

General ZWICKER. I was referring to at least include all matters on which higher authority than I based the action which resulted in the letter—subject: Relief From Active Duty and Separation From the Service.

Mr. WILLIAMS. Well, in your answer, you just said that you didn't believe you had testified that everything you had heard that morning, the morning of February 18, 1954, was of record. Now, I think you did testify to that, and I want to ask you about it.

Please look at your copy of the testimony, page 152—and, so that you will know just where I am beginning, I am going to ask you to come down about a third of the way down the page, beginning with "The Chairman":

In other words, you sat here this morning and listened to the testimony, you heard nothing new?

Cohn interceded, saying:

Nothing substantially new?

General ZWICKER. I don't believe so.

The CHAIRMAN. So that all of these facts—

obviously referring to the facts testified to in the morning—

were known at the time he was ordered to receive an honorable discharge?

General ZWICKER. I believe they are all on record; yes, sir.

Now, didn't you say, General—

General ZWICKER. Yes, sir

Mr. WILLIAMS. Is that not a fair inference from your testimony, sir, that all of those things that you heard that morning of February 18 about Peress were of record in the Army?

General ZWICKER. I believe that the inference to be made from the testimony that I gave that morning is exactly as it is given in the transcript.

The question, not asked by the Senator, but asked by Mr. Cohn, was:

Nothing substantially new?

To which I replied:

I don't believe so.

The next question was:

So that all of these facts were known at the time he was ordered to receive an honorable discharge?

To which I replied:

I believe they are all on record; yes, sir.

Mr. WILLIAMS. Now, did you regard the testimony of a New York policewoman who named Irving Peress as a section leader in the Communist Party as substantial?

General ZWICKER. I did.

Mr. WILLIAMS. Well, then, that wasn't you, was it, General?

General ZWICKER. I don't know whether it was me or not.

Mr. WILLIAMS. Well, you regarded it as substantial, and you said there was nothing substantially new.

So you must not have regarded Ruth Eagle's testimony as substantially new. Is that not right?

General ZWICKER. I wouldn't know.

Mr. WILLIAMS. Well, can't you help us on that, General?

We are trying to get the facts here now.

(At this point General Zwickler conferred with his counsel.)

General ZWICKER. I will try and give you a better answer, Mr. Williams.

Mr. WILLIAMS. All right.

General ZWICKER. In my answer to you, or in this testimony, substantially new—I was not, of course, referring by the word "substantially" to any one person's specific testimony, whether it be Miss Eagle's or anyone else.

I was trying to convey the impression to Senator McCarthy and the other members of his committee that the record, as it stood and as it was known to me, and it was known to higher authority, would have been unchanged insofar as the promulgation of this order was concerned by anything that was given that morning.

Mr. WILLIAMS. Well, do you see, General, as we sit and discuss this, how you appeared to have been quite inconsistent there?

General ZWICKER. No, sir; I don't.

Mr. WILLIAMS. You don't see that?

General ZWICKER. I do not.

Mr. WILLIAMS. Thank you.

Now, General, I want to ask you whether or not this statement, at page 151—again, I have to take you down one-third of the page:

General ZWICKER. I was never officially informed by anyone that he was part of the Communist conspiracy, Mr. Senator.

Was that a correct statement?

(At this point General Zwickler conferred with his counsel.)

General ZWICKER. As a positive fact; yes, sir.

Mr. WILLIAMS. Now, did you have in mind, when you have in mind, when you made that statement, the records about which you were talking over in the colloquy to which we have just addressed your attention?

General ZWICKER. Yes; I believe I did.

Mr. WILLIAMS. Now, if the records showed that the man was a Communist, would you regard that as official information?

General ZWICKER. Your question, if the record showed that he was a Communist?

Mr. WILLIAMS. Yes, sir. If there was evidence that he was a Communist and that, when asked about it, he had taken the fifth amendment, would you regard that as official information?

General ZWICKER. I don't believe that I had access to any records that ever had proven that this man was a Communist.

Mr. WILLIAMS. Well, I want to go back to the question I asked you. My question was this:

If the record showed that the man had been identified under oath by a witness as being a member of the Communist Party, and the record showed that when asked about that, he had taken the fifth amendment, would you regard that as official information that he was a Communist?

General ZWICKER. If it had been transmitted to me; yes.

Mr. WILLIAMS. If you knew about it, would you regard it—

General ZWICKER. Not as official; no, sir.

Mr. WILLIAMS. Wouldn't it be official?

General ZWICKER. No, sir.

Mr. WILLIAMS. So that when you used the word "official," you were qualifying what you had said; is that right?

You didn't mean to suggest that you had never been informed?

General ZWICKER. That's correct.

Mr. WILLIAMS. You meant you had never been officially informed; is that right?

General ZWICKER. That's correct.

Mr. WILLIAMS. So that before you could take any action, it was necessary to get official information?

General ZWICKER. Yes.

Mr. WILLIAMS. It wouldn't make any difference if the records of the United States Army contained this unless those records were officially transmitted to you, you would not take any cognizance of them? (The witness conferred with his counsel.)

General ZWICKER. Would you please state your question again?

Mr. WILLIAMS. So it will be completely accurate, I will ask the reporter to read it back.

(The reporter read the question referred to as follows: "It wouldn't make any difference if the records of the United States Army contained this unless those records were officially transmitted to you, you would not take any cognizance of them?")

General ZWICKER. I would take cognizance of none other than official records.

Mr. WILLIAMS. I am talking about the records that you talked about at page 152, when you said, I believe they are all on record. I am talking about that record.

General ZWICKER. All right.

Mr. WILLIAMS. Now, is that an official record?

General ZWICKER. It is.

Mr. WILLIAMS. Well, then, and you knew about that record?

General ZWICKER. I certainly did.

Mr. WILLIAMS. Then it was officially known to you, then, was it not, that Peress was a Communist?

General ZWICKER. The contents of those records are officially known to me. Their contents I am not privileged to divulge.

Mr. WILLIAMS. But you testified about these records on February 18 when you said you never were officially informed by anyone that he was part of the Communist conspiracy, and when you said that everything that had been testified to in the morning session at Foley Square were of record in these official records; didn't you testify about them then?

General ZWICKER. I testified to that and there may be some in the Department of the Army and other places that may think I was in error in so doing.

Mr. WILLIAMS. In other words, you don't feel that you can testify today about them; is that right?

General ZWICKER. I do not; I may not testify to anything.

Mr. WILLIAMS. You can't tell us today whether this statement that you made on February 18 is the fact or not, namely:

I was never officially informed by anyone that he was part of the Communist conspiracy.

General ZWICKER. The record speaks for itself, Mr. Williams. I would not like to—

Mr. WILLIAMS. What I am trying to find out, General, is whether or not you can state today whether that was an accurate statement or not.

General ZWICKER. I consider that to be just as accurate today as it was then.

Mr. WILLIAMS. But that is not the answer, General. I don't know how accurate you considered it to be then.

General ZWICKER. I would not have made it unless I expected it to be accurate.

Mr. WILLIAMS. You see nothing inconsistent between that answer and the answer that you gave later saying that all the facts developed

at Foley Square when Ruth Eagle testified and when Irving Peress took the fifth amendment were of record and that you still never had any official knowledge that this man was a Communist. You feel there is no inconsistency there?

General ZWICKER. It is a right long question.

Mr. WILLIAMS. I will state it again; I will state it slowly.

General ZWICKER. Take it one step at a time.

Mr. WILLIAMS. I say, you see no inconsistency, you see no inconsistency in saying on the one hand, "I had no official information that Irving Peress was a Communist," and on the other hand saying that the Army record showed all the information testified to on February 18, 1954, which included identification by a New York undercover agent of the police department, named Peress as a Communist, and which included Peress' denial or Peress' invocation of the fifth amendment. Do you see nothing inconsistent between saying, I have no official information he was a Communist and, on the other hand, saying I knew what was in the record of the Army which contained these things that I have just outlined?

General ZWICKER. I don't believe that I have indicated specifically that the information or the testimony given in the open hearing in the morning was under any circumstances known to me. Prior to the time that it was given in court. I am speaking specifically as you have about the Eagle testimony.

The CHAIRMAN. Just a moment. Let him finish his answer.

Have you finished your answer?

General ZWICKER. Yes.

The CHAIRMAN. All right, proceed.

Mr. WILLIAMS. Now, let's see, General, whether or not you did indicate that this was known to you.

Didn't the chairman ask you, in other words, as you sat here this morning and listened to the testimony, you heard nothing new, and you said, I know nothing substantially new.

Mr. Cohn said, "Nothing substantially new?"

You said, "I don't believe so."

You were then talking about what you knew, were you not?

General ZWICKER. I again direct your attention to the fact that I said, "substantially new."

Mr. WILLIAMS. But you were talking then about what you knew, were you not?

General ZWICKER. Yes.

Mr. WILLIAMS. And he was asking whether or not you heard anything substantially new when you heard Ruth Eagle testify in the morning that this man was a Communist section leader, and when you heard Irving Peress say he took the fifth amendment.

He was asking what you knew then, wasn't he?

General ZWICKER. Will you repeat the last part?

Mr. WILLIAMS. Yes. The chairman was asking you then, when he directed that question to you, about what you knew, not what was of record, and you said that you heard nothing substantially new, did you not?

General ZWICKER. That's correct.

Mr. WILLIAMS. And you had heard Eagle's testimony and Peress's testimony?

General ZWICKER. I had.

Mr. WILLIAMS. So that the fair statement is that you knew these things, did you not, General, as well as the record?

General ZWICKER. The statement made is still the same. There had been nothing substantially new that I had not known about prior to this time that was introduced in that morning's testimony.

Mr. WILLIAMS. So that we may conclude from that, may we not, that you knew that was developed that morning, and the record shows what was developed that morning, did it not?

General ZWICKER. You may make that conclusion.

Mr. WILLIAMS. Well, I am asking you, sir; is that a fact?

General ZWICKER. The facts are as stated in my testimony here, to the best of my belief.

Mr. WILLIAMS. Well, then, I will ask you the question: You did hear nothing substantially new that morning, did you?

General ZWICKER. That is right.

Mr. WILLIAMS. And you heard nothing which was not of record that morning, did you?

General ZWICKER. If you are alluding to the record as it appeared in the press and press releases, and differentiating from the files to which I have access, then I would say you are correct.

Mr. WILLIAMS. Well, when you used the term "I believe are on record," you were not referring to the press releases, were you?

General ZWICKER. I am trying, sir, to give you as much information as I can, under the restrictions under which I am acting; and I hope that you understand that I can give nothing—no information—that has anything at all to do with certain files.

Mr. WILLIAMS. I see. Now, I will ask you the question again, General.

General ZWICKER. All right.

Mr. WILLIAMS. When you said, "I believe they are on record," you were referring to press releases, were you not?

General ZWICKER. No, but I certainly was referring to the testimony that had been given.

Mr. WILLIAMS. You do not mean to say, General, that when you said in response to the chairman's question:

So that all these facts were known at the time he was ordered to receive an honorable discharge—

you implied that there were all on record, that you referred to press releases?

General ZWICKER. No, I do not want to create that impression.

Mr. WILLIAMS. You were referring to the record?

General ZWICKER. I was referring to the record; yes.

Mr. WILLIAMS. Now, General, you had talked to John Adams before you testified, February 18, had you not?

General ZWICKER. I had.

Mr. WILLIAMS. You had talked to John Adams between the time that you talked to either Anastos or Juliana——

General ZWICKER. Yes.

Mr. WILLIAMS. And the time you testified?

General ZWICKER. That is correct.

Mr. WILLIAMS. You talked to John Adams in some detail the day before, did you not?

General ZWICKER. In very little detail. No, sir. I talked to Mr. Adams on the afternoon of February 17.

Mr. WILLIAMS. Now, at page 153 of the testimony there were questions directed to you concerning the honorable discharge of Irving Peress; and, right at the bottom of the page, you were asked:

Have you discussed that matter with Mr. Adams?

You answered:

As a person, no, sir.

What did you mean by that?

General ZWICKER. I meant exactly what I said. I did not discuss the honorable discharge of Mr. Peress with Mr. Adams, neither did I receive from him or anyone else at First Army level or Department of the Army level any directives as to what I was to testify to, or about any action I was to take under this order, except for the order itself.

Mr. WILLIAMS. Now, General, before leaving this record of the testimony, I was a little disturbed this morning lest maybe I had jumped too far from page 146 to 147, after Senator Stennis called my attention to that.

I wanted to ask you just 2 or 3 questions with relation to your answers therein contained.

Now, so that you will know exactly what I am talking about, I call your attention to the very bottom of page 146. The chairman asked you this question:

The day the honorable discharge was signed, were you aware of the fact that he had appeared before our committee?

You answered:

I was.

The CHAIRMAN. And had refused to answer certain questions?

You answered:

No, sir; not specifically on answering any questions. I knew that he had appeared before your committee.

Well, now, General, when you made that answer, you knew perfectly well, did you not, that at the time Peress got his honorable discharge, you knew that he had refused to answer questions before the committee?

General ZWICKER. I did not know or specifically recall questions which Peress was alleged to have been asked during his hearing. I was, of course, generally aware of the fact that communistic activity was the basis for his examination, and that he had refused to answer questions relative to that activity.

Mr. WILLIAMS. So, then, General, do you think it was a completely candid answer for you, sir, to say, when you were asked whether you knew that he had refused to answer certain questions:

No, sir, not specifically on answering any questions. I knew that he had appeared before your committee.

Do you think that was a fully candid answer, General?

General ZWICKER. I will permit you to interpret that, sir.

Mr. WILLIAMS. You have no comment on that?

General ZWICKER. No comment.

Mr. WILLIAMS. Then I direct your attention to page 147 at the top, where the chairman asked you this question:

And you knew, generally, that he had refused to tell whether he was a Communist; did you not?

And you answered:

I don't recall whether he refused to tell whether he was a Communist.

Do you think that is a completely candid answer?

General ZWICKER. Yes, sir; I do. Definitely.

Mr. WILLIAMS. You do?

General ZWICKER. Yes.

Mr. WILLIAMS. Is it your testimony, General, that at the time Peress was discharged you honestly did not know that he had refused to tell the committee that he was a Communist?

General ZWICKER. I don't know about that, sir.

Mr. WILLIAMS. Well, that is the question.

General ZWICKER. The question as it was stated there:

And you knew, generally, that he had refused to tell whether he was a Communist; did you not?

My answer was:

I don't recall whether he refused to tell whether he was a Communist.

Mr. WILLIAMS. But you did know, didn't you, General?

General ZWICKER. That is not the question, sir.

Mr. WILLIAMS. Well, would you please enlighten me on this, because I don't understand what you mean, sir?

General ZWICKER. You seem to be making a point out of the specific question asked by the chairman and my answer to the question, the question being:

And you knew generally that he had refused to tell whether he was a Communist; did you not?

And my answer:

I don't recall whether he refused to tell whether he was a Communist.

Mr. WILLIAMS. But, General, you knew perfectly well——

The CHAIRMAN. That is not the question, Mr. Williams.

Mr. WILLIAMS. It certainly is the question. He said he didn't recall it, and he was not being truthful under oath.

The CHAIRMAN. The answer is:

I don't recall whether he refused to tell whether he was a Communist.

Let us put the emphasis on "tell."

Mr. WILLIAMS. Mr. Chairman, I suggest that you are taking that answer and by virtue of the fact that you misunderstand it——

The CHAIRMAN. Maybe I do. You asked him what he knew and he replies that he was talking about whether he refused to tell.

Mr. WILLIAMS. I am talking about whether he knew that Peress had refused to tell, and I am asking him now: "Didn't you know at the time that you discharged him that he refused to tell that he was a Communist?"

General ZWICKER. I answered that question:

I don't recall whether he refused to tell whether he was a Communist.

And I am, of course, again referring to his appearance on that morning.

Mr. WILLIAMS. Yes. The fact is that you did recall very well at this time that he had refused to tell whether he was a Communist.

General ZWICKER. If I had, I would not have answered it in the manner in which I did. I answered the question:

I don't recall whether he refused to tell whether he was a Communist.

Mr. WILLIAMS. In other words, you are testifying here today that, in fact, did not know, and didn't recall on February 18 whether Peress had refused to tell the subcommittee that he was a Communist?

General ZWICKER. No, that is not quite correct.

Mr. WILLIAMS. What is quite correct?

General ZWICKER. You will find also in the testimony that I was aware that Major Peress took refuge in the fifth amendment and that he refused to answer almost every question, I believe, put to him by the committee and took refuge in the fifth amendment.

I do not recall, Mr. Williams, any questions that would ask specifically whether or not he refused to tell whether he was a Communist, and to clarify my thought on that, I say again that, in my opinion, my recollection of listening to him testify, whenever he was addressed such a question as, "Are you a Communist?" or "Were you a Communist?" he made no answer.

He said:

I refuse to answer under the provisions of the fifth amendment.

Now, that is my opinion, Mr. Williams.

Mr. WILLIAMS. You did not think that he had invoked the fifth amendment on any other such matter than communism, did you?

General ZWICKER. I was not thinking for Major Peress.

Mr. WILLIAMS. No, but you were thinking for General Zwickler when you were answering these questions.

General ZWICKER. I am right now, indeed.

Mr. WILLIAMS. And it never occurred to you at any time that Major Peress had invoked the fifth amendment on any other subject than his communism, his Communist activities?

General ZWICKER. I would doubt it.

Mr. WILLIAMS. So, then, he invoked the fifth amendment and when he did you assume it was about his Communist activities?

General ZWICKER. I testified, Mr. Williams, as I repeated, sir, that I do not recall, or did not recall, at that time whether he refused to tell whether he was a Communist.

Mr. WILLIAMS. Now, I want to call your attention, General, to what you said on direct examination in this caucus room this morning, and lest there be any question about it, I am going to ask the reporter to get the transcript and see if I did not ask you whether or not, as of February 1, when you discharged Peress, you did not know that he had refused to answer questions on communism before the subcommittee.

Your answer was yes, you knew it.

Do you remember making that answer this morning?

General ZWICKER. Substantially I do; yes, sir.

Mr. WILLIAMS. Well, then, did you forget it between February 1 of 1954, and February 18, 1954?

General ZWICKER. No.

Mr. WILLIAMS. Well, then, why did you give the next answer that you gave—and I am now directing your attention to the middle of page 147, where you said:

I believe I remember reading in the paper that he had taken refuge in the fifth amendment to avoid answering questions before the committee.

The CHAIRMAN. About communism?

General ZWICKER. I am not too certain about that.

Do you see, General, that there is an inconsistency there?

General ZWICKER. I do not. That may be your interpretation.

Mr. WILLIAMS. Would you think it was an unreasonable interpretation, sir, for an examiner to feel that your testimony this morning was inconsistent with that?

General ZWICKER. That would be his privilege.

Mr. WILLIAMS. Would it also be his privilege, sir, to vigorously cross-examine if he saw that inconsistency?

General ZWICKER. It would.

Mr. WILLIAMS. I want to call your attention again, General, to page 147, about three-fourths of the way down. The chairman asked you:

Did you know that he refused to answer questions about his Communist activities?

General ZWICKER. Specifically, I don't believe so.

General ZWICKER. That is correct.

Mr. WILLIAMS. Now, do you see anything inconsistent between that and what you testified to this morning, General?

General ZWICKER. No, sir; I don't.

Mr. WILLIAMS. Do you remember a conversation that you had with General Lawton in December 1953?

General ZWICKER. I do not.

Mr. WILLIAMS. You have no recollection of a conversation with him?

General ZWICKER. Oh, yes, indeed; I remember talking to General Lawton.

Mr. WILLIAMS. Do you recall talking to General Lawton about Senator McCarthy?

General ZWICKER. I do not.

Mr. WILLIAMS. You have no recollection of that at all?

General ZWICKER. None whatsoever.

Mr. WILLIAMS. Would you deny you did, General?

General ZWICKER. Yes; I would.

Mr. WILLIAMS. You would deny—

General ZWICKER. Oh, I am sorry; I don't deny it: no, sir.

Mr. WILLIAMS. You would not deny it?

General ZWICKER. No.

Mr. WILLIAMS. But you don't recall?

General ZWICKER. I have no recollection of any word of any kind that passed between General Lawton and I at the time he was present at Camp Kilmer for another matter.

Mr. WILLIAMS. Do you recall sitting in the audience at Foley Square, General, and listening to the testimony of Peress and Ruth Eagle?

General ZWICKER. I do.

Mr. WILLIAMS. I believe you testified this morning that you didn't remember whether or not, or you couldn't recall, or didn't recall, whether or not you had used the epithet that was attributed to you by Mr. Harding; is that right?

General ZWICKER. That is right.

Mr. WILLIAMS. You don't recall?

General ZWICKER. I do not.

Mr. WILLIAMS. Do you deny that you did it?

General ZWICKER. Since there was no occasion for me to have made any such utterance, I do not think it is even remotely possible that I made any such remark. I cannot categorically deny that I said anything that I don't recall any part of.

Mr. WILLIAMS. I have no further questions.

The CHAIRMAN. Mr. de Furia, do you have any further questions?

Mr. DE FURIA. Yes, sir.

General, did you promote Peress?

General ZWICKER. I definitely did not.

Mr. DE FURIA. Did you discharge him with an honorable discharge?

General ZWICKER. I did, sir.

Mr. DE FURIA. Was that on your own initiative or under orders, sir?

General ZWICKER. It was under orders.

Mr. DE FURIA. What kind of work was Peress doing while you were commandant at Camp Kilmer?

General ZWICKER. He was a dentist and his work was confined strictly to dentistry.

Mr. DE FURIA. Was he in what you would call a sensitive position so far as intelligence or information or classified material was concerned?

General ZWICKER. He was not.

Mr. DE FURIA. Senator Irving suggests that perhaps working with teeth and nerves, that made it a sensitive position.

When you learned about the Peress separation order, did you express to anyone your feelings about the merits or demerits about that separation order?

General ZWICKER. I certainly did.

Mr. DE FURIA. When you learned that Peress was going from captain to be a major, did you express your personal feelings about that?

General ZWICKER. I certainly did.

Mr. DE FURIA. And when you learned that Peress was about to be discharged with an honorable discharge, did you express your personal feelings about that?

General ZWICKER. Most emphatically.

Mr. DE FURIA. How many separation orders for officers come through Camp Kilmer, or came through from July 1953 to March of 1954? How many a day or a week?

General ZWICKER. Our separation capacity at Camp Kilmer is geared to 16,500 a month, sir.

Mr. DE FURIA. That is all I have, Mr. Chairman.

Mr. WILLIAMS. Mr. Chairman, may I ask one question in light of the redirect?

The CHAIRMAN. Certainly.

Mr. WILLIAMS. Mr. de Furia, General, just asked you whether you ever objected to Peress being honorably discharged, and you said—

Mr. DE FURIA. I didn't say that, Mr. Chairman.

Mr. WILLIAMS. Well, I ask the record be read, then.

The CHAIRMAN. I have been informed the other reporter has that testimony.

Mr. WILLIAMS. Separated—Do you want me to use that word? Is that the word you used?

Mr. DE FURIA. Mr. Williams, I believe I asked whether he expressed his opinions about the subject, sir.

Mr. WILLIAMS. What is your answer, General?

General ZWICKER. I certainly did.

Mr. WILLIAMS. Did not Mr. de Furia then ask you whether you opposed it?

General ZWICKER. I don't believe so, sir.

Mr. WILLIAMS. He did not?

General ZWICKER. I don't believe so.

Mr. WILLIAMS. Do you remember that the chairman of the subcommittee who interrogated you on February 18 asked you this question:

Did you at any time ever object to this man being honorably discharged?

And you refused to answer that question?

General ZWICKER. Yes, sir.

Mr. WILLIAMS. Well, now—

Mr. DE FURIA. That is why I didn't ask the question, Mr. Chairman.

Mr. WILLIAMS. Now, do you see a difference, General, between your position then and your position now?

General ZWICKER. No, sir.

Mr. WILLIAMS. Will you state for the record wherein the difference lies in the question that was asked you on February 18, and the question that was asked you by Mr. de Furia?

General ZWICKER. If you would repeat the questions independently, sir, I would be very glad to do that.

I would like to have them from the record.

Mr. WILLIAMS. Will you take that from the record, Mr. Reporter?

The CHAIRMAN. We have sent for the reporter. The other reporter took it. He has left. We will get him back. As soon as he returns, we can have the questions read back, and the answers as well.

Mr. DE FURIA. I repeated my question three times, and I think I remember what I said, sir, and that was:

Did he express his personal feelings about the claim of the refuge of the fifth amendment and about the separation order and about the honorable discharge? I did not ask him about whether he objected to those things because of the Presidential orders.

Mr. WILLIAMS. What was the purpose of the inquiry if we weren't going to get that information?

Was it to leave an inference?

Mr. DE FURIA. I don't think I have to answer that, Mr. Williams.

Mr. WILLIAMS. When you expressed your opinion, General, were you for it or against it?

That is the next question: Were you for these things or against them; to clear the record up on it?

(At this point General Zwicker conferred with Colonel Johnson.)

Mr. WILLIAMS. Don't you have the record, Mr. Reporter, where Mr. de Furia asked the witness—

General ZWICKER. Mr. Williams, I have been informed by my counsel that he indicates that I may answer your question in the manner which I hope will be satisfactory to you.

I am informed by my counsel I may answer your question in this manner: That my personal opinion was that I was very much opposed

to any change in grade of Peress, regardless of how it was accomplished, that I was very much opposed to his receiving an honorable discharge.

And what was the third factor?

Mr. DE FURIA. About his claim of refuge in the fifth amendment.

General ZWICKER. Yes, sir, and was very much opposed to any officer in the United States Army invoking the fifth amendment.

Mr. WILLIAMS. Did you express this opinion to anyone, sir?

General ZWICKER. I did.

Mr. WILLIAMS. Did you express this opinion to persons in the service?

(At this point General Zwickler conferred with Colonel Johnson.)

Did you express it to——

The CHAIRMAN. Just a moment. He hasn't answered yet. Let's get the answer before you ask him another question.

General ZWICKER. My counsel says I am now at the end of the rope.

Mr. WILLIAMS. Why couldn't you give those answers, General, to the questions that were propounded to you on February 18?

General ZWICKER. For the same reason I am not able, apparently, to give a satisfactory answer to those questions today.

Mr. WILLIAMS. The answers you have just given, sir, that you expressed your opinion personally to these actions—why couldn't you have given those answers on February 18?

General ZWICKER. I don't know, Mr. Williams. My opinion is had they been presented in that way I may have been able to do it.

However, I would like to make this statement:

That I am much, much more familiar with proceedings and hearings and what I could say and what I couldn't say now than I was on February 18.

Mr. WILLIAMS. Thank you, sir.

The CHAIRMAN. And may I ask this question:

Did you have counsel with you at that time?

General ZWICKER. No, sir; I did not.

The CHAIRMAN. Had you consulted counsel before you went into that hearing?

General ZWICKER. No, sir; except, again, in order that it not be brought up, I did talk to Mr. Adams, of course, and Mr. Haskins, but having no bearing, sir, on my testimony on the day of the 18th.

The CHAIRMAN. In fairness to you, probably we ought to bring to the attention now of the committee this testimony appearing on page 146:

Mr. COHN. Now, General, would you like to be able to tell us exactly what happened in that case, and what steps you took and others took, down at Kilmer to take action against Peress a long time before action was finally forced by the committee?

General ZWICKER. That is a toughie.

Do you find it?

General ZWICKER. Yes, sir; I do.

The CHAIRMAN. To continue:

Mr. COHN. All I am asking you now is if you could, if you were at liberty to do so, would you like to be in a position to tell us that story?

General ZWICKER. Well, may I say that if I were in a position to do so, I would be perfectly glad to give the committee any information that they desired.

Mr. COHN. You certainly feel that that information would not reflect unfavorably on you; is that correct?

General ZWICKER. Definitely not.

Mr. COHN. And would not reflect unfavorably on a number of other people at Kilmer and the First Army?

General ZWICKER. Definitely not.

The CHAIRMAN. It would reflect unfavorably on some of them, of course.

General ZWICKER. That I can't answer, sir. I don't know.

Now, I understand you are finished with the examination.

There were two questions that were reserved for this morning. Does counsel, in view of the examination this afternoon, still want those questions pressed?

Mr. WILLIAMS. I have forgotten what they were now.

The CHAIRMAN. Well, we reserved them. If you still want them pressed——

Mr. WILLIAMS. I have no desire to press them now, Mr. Chairman.

The CHAIRMAN. All right.

Thank you. You may step aside, General, unless members of the committee have some questions to ask.

Senator ERVIN. Mr. Chairman, I would like to ask one question.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. As I recall, those questions that the chairman referred to, General, were questions put to you this morning by Mr. Williams as to what you knew about the Peress case in August 1953, and you declined to answer those questions, you said, on the basis of the orders to which you were subject?

General ZWICKER. Yes, sir.

Senator ERVIN. Do I draw the inference correctly that you declined to answer those questions this morning because your knowledge of the Peress case at that time was based on Army records of a security nature?

General ZWICKER. Yes, sir.

Senator CARLSON. Mr. Chairman?

The CHAIRMAN. Senator Carlson.

Senator CARLSON. General Zwickler, I think it will help me a little bit here if I get some of these items fixed a little better in my mind.

As I understand it now, you appeared at this hearing on February 18, at this courthouse in New York, both in the forenoon and afternoon?

General ZWICKER. Yes, sir.

Senator CARLSON. And do I understand that this letter that has been made a part of the record this morning from Secretary Stevens, given to you, or given to Senator McCarthy, was presented to the Senator the afternoon of the day of February 18?

General ZWICKER. I believe it was between the morning recess and the time that the hearing in the afternoon was resumed.

Senator CARLSON. Well, then——

General ZWICKER. About noon I would say; yes, sir.

Senator CARLSON. In other words, this letter was delivered by Mr. Adams about noon of that day; is that correct?

General ZWICKER. Yes, sir.

Senator CARLSON. You were then called, as I remember it, to the stand in the afternoon, about 4:30, of that same day?

General ZWICKER. Of the same day; yes, sir.

Senator CARLSON. That is all, Mr. Chairman.

The CHAIRMAN. Are there any other questions?

If not, the general will be excused.

Colonel JOHNSON. Sir, may I understand that?

Is the general being permanently excused?

He has orders to comply with and, unless the committee so desires, he does not plan on staying here in Washington.

The CHAIRMAN. Under the circumstances, I think, unless some members of the committee, or counsel for Senator McCarthy, or the committee counsel, have more questions, you are excused permanently.

If anything does come up, we might catch you en route.

Of long experience, I never say a matter is over until it is over.

General ZWICKER. Yes, sir.

Colonel JOHNSON. At least, sir, I do not want him to be held in contempt.

The CHAIRMAN. Well, he will not be held in contempt if we have to call him, but as far as this hearing is concerned, that we know of at this moment, he is excused.

We will take a 15-minute recess at this point.

(Whereupon, at 3:30 p. m., a 20-minute recess was taken.)

The CHAIRMAN. The committee will resume session.

Mr. de Furia, will you call the next witness.

Mr. DE FURIA. I should like to inquire whether Mr. George Anastos is in the room, sir?

The CHAIRMAN. Is Mr. Anastos here?

If he is, please come forward.

Senator MCCARTHY. Mr. Chairman.

The CHAIRMAN. Senator McCarthy.

Senator MCCARTHY. The implication there is that Mr. Anastos has been subpoenaed. I asked Mr. Frank Carr if he was asked where Mr. Anastos was. I told Carr to bring him down anyway and I think Mr. de Furia should make it very clear that he has never asked the chief of our staff where Mr. Anastos was; never made any attempt to find out where he was; so this request, "Is Mr. Anastos in the room?" I believe is completely unfair. It leaves the impression that Anastos had been subpoenaed.

I have, however, on my own, asked Mr. Anastos to come down.

Mr. DE FURIA. Mr. Chairman, we had a subpoena issued by you in the regular process and that was turned over to the Sergeant-at-Arms of the Senate, and then to the United States marshal, and they looked for Mr. Anastos, I believe, sir, and they cannot find him. I was in hopes he was here today. I only have a few questions to ask him and it would clear our record.

That is the purpose of inquiring. I don't know Mr. Anastos and he might well have been.

Mr. WILLIAMS. Did you talk to Mr. Frank Carr about this, Mr. de Furia?

Mr. DE FURIA. Unfortunately, I have been somewhat occupied and matters of subpoena have not been under my supervision.

Mr. WILLIAMS. Lest unfair inference be drawn, I am sure you don't want that to happen, let me say this, that Mr. Carr, after hearing that you wanted Mr. Anastos, undertook to call him all day yesterday. Mr. Anastos is in Pittsburgh on a committee assignment. Mr. Anastos was away for the weekend. Mr. Carr stayed up late through the night trying to reach him and did reach him this morning and asked

him to come down here today for you. I don't think it is fair to call out in the room and ask whether he is here when you have not yourself asked him to be here and subpoenaed him and we have made every effort to bring him here for you.

MR. DE FURIA. I told you at least twice I was looking for Mr. Anastos and if you had just told me what you have just stated, it would have simplified the matter.

MR. WILLIAMS. You didn't ask me.

MR. DE FURIA. Very well.

I would like to ask Mr. Nelson, Mr. Clifford Nelson, to come forward.

The CHAIRMAN. Mr. Nelson will be sworn.

TESTIMONY OF CLIFFORD J. NELSON

The CHAIRMAN. Do you solemnly swear that the testimony you will give in the matter now pending before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. NELSON. I do.

The CHAIRMAN. Proceed with the examination.

MR. DE FURIA. With the chairman's permission, Mr. Nelson, will you please give us your full name, address, and official position?

MR. NELSON. Full name is Clifford J. Nelson. My address is 2203 Observatory Place NW., in Washington. My official position, I am an attorney in the Internal Security Division of the Department of Justice, now assigned to duty as department security officer.

MR. DE FURIA. The department security officer of the Department of Justice?

MR. NELSON. That's right, sir.

MR. DE FURIA. How long have you been with the Department of Justice?

MR. NELSON. I believe the date is January 22, 1951.

MR. DE FURIA. January 22, 1951?

MR. NELSON. Since that time; yes, sir.

MR. DE FURIA. Were you familiar with the classification procedure and requirements of the Department of Justice from January 1951 to date?

MR. NELSON. Yes, sir.

MR. DE FURIA. January 1951, what did the word "confidential" mean upon report or investigation issued by the Department of Justice? By the FBI, I am sorry, sir.

MR. NELSON. Well, it meant it was the classification of a document concerning the information contained in it, sir.

MR. DE FURIA. Was the word "confidential" an officially recognized method at that time of designating FBI reports?

MR. NELSON. Yes, sir.

MR. DE FURIA. Was there a top rating, so far as disclosure or secrecy was concerned, in January 1951?

MR. NELSON. To my knowledge, the only classification the FBI used at that time was the classification "confidential."

MR. DE FURIA. Was there any regulation in January 1951 that the word "confidential" had to be printed, typed, stamped, or written or designated in any particular fashion?

Mr. NELSON. Not to my knowledge, sir, if I understand your question correctly. You mean as to the physical way the classification is put on the document?

Mr. DE FURIA. Yes, sir.

Mr. NELSON. I would say, no, sir.

Mr. DE FURIA. How was it customary to affix the word "confidential" on papers and documents which were not to be disclosed? I mean, what was the manner in which it was usually done in January of 1951?

Mr. NELSON. I don't think there was any particular manner—written on in hand, typed on, stamped, just whatever the circumstances were, whatever the person classifying the document or placing it on there would happen to use.

Mr. DE FURIA. Now, in May or June of 1953, was there any change in the signification of the word "confidential" as applied to FBI reports?

Mr. NELSON. May or June of 1953?

Mr. DE FURIA. Yes.

The CHAIRMAN. Do you want to expand that so we will have it covered as to not only reports, but documents, letters?

Mr. DE FURIA. Yes, sir.

The CHAIRMAN. And whatever might be issued by the FBI, or in whatever form it might be.

Mr. NELSON. Well, there was a change.

The CHAIRMAN. Do you accept that as part of the question?

Mr. DE FURIA. Yes.

The CHAIRMAN. So the witness will know and cover the field while he is at it.

Mr. NELSON. Well, as of May or June, he said, of 1953, there was then in effect Executive Order 10290 in which I understand the FBI operated, and that 10290 had four different degrees of classification.

Mr. DE FURIA. We have that in the record, Mr. Nelson.

Mr. NELSON. Yes.

Mr. DE FURIA. Now, in January 1951, which order was in effect so far as marking FBI records, papers, documents, reports, confidential?

Mr. NELSON. To my knowledge, I believe there had been several departmental orders. I have one with me here. I recall there was one in 1946. I can't quote it. I will be glad to get it for the committee if it is desired.

There was another one in April 1948, put out by the then Attorney General to the effect that all FBI files, records, reports, et cetera are confidential.

Mr. DE FURIA. Will you give us the date of that order, the one that you are referring to now, of April 1948, which apparently followed President Truman's order of March 1948?

Mr. NELSON. That order is dated April 23, 1948, sir.

Mr. DE FURIA. Signed by whom?

Mr. NELSON. Tom C. Clark, Attorney General.

Mr. DE FURIA. Addressed to whom?

Mr. NELSON. To the heads of all Government departments, agencies, and commissions.

Mr. DE FURIA. Mr. Williams, would you like to see that? I would like to have it read into the record at this point.

Mr. WILLIAMS. I certainly would like to see it; yes.

The CHAIRMAN. Will the witness give us an extra copy, if he has one?

Mr. NELSON. I have a copy here, and these were hurriedly made. I have several copies of them.

Mr. DE FURIA. Will you please read that order, so that it will be in the record, Mr. Nelson?

Mr. NELSON. Yes, sir; I shall be glad to. This is on the stationery of the Office of the Attorney General, Washington, D. C., and dated April 23, 1948. It is directed to the heads of all Government departments, agencies, and commissions.

The text of the order reads as follows:

As you are aware, the Federal Bureau of Investigation from time to time makes available to Government departments, agencies, and commissions information gathered by the Federal Bureau of Investigation which is of interest to such departments, agencies, or commissions. These reports and communications are confidential. All such reports and communications are the property of the Federal Bureau of Investigation and are subject at all times to its control and to all privileges which the Attorney General has as to the use of or disclosure of documents of the Department of Justice. Any department, agency, or commission receiving such reports or communications is merely a custodian thereof for the Federal Bureau of Investigation, and the documents or communications are subject to recall at any time.

Neither the reports and communications nor their contents may be disclosed to any outside person or source without specific prior approval of the Attorney General or of the Assistant to the Attorney General or an Assistant Attorney General acting for the Attorney General.

Should any attempt be made, whether by request or subpoena or motion for subpoena or court order, or otherwise, to obtain access to or disclosure of any such report or communication, either separately or as a part of the files and records of a Government department, agency, or commission, the reports and communications involved should be immediately returned to the Federal Bureau of Investigation in order that a decision can be reached by me or by my designated representative in each individual instance as to the action which should be taken.

TOM C. CLARK,
Attorney General.

Mr. DE FURIA. We have concluded our examination, Mr. Chairman.

Mr. WILLIAMS. Mr. Chairman—

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Mr. Nelson, this order which you have produced, here, dated April 23, 1948, is an order signed by the Attorney General, Tom Clark, that is an administrative classification order; is that not right? Can you call that an administrative classification order or a classification order for administrative purposes?

Mr. NELSON. Well, we can get into—I am not quite sure I know what you mean.

Mr. WILLIAMS. Let me see if I can clear it up. This order, in so far as security information is concerned, was superseded on September 24, 1951, by Executive Order 10290; is that not so?

Mr. NELSON. I would say so; yes, sir.

Mr. WILLIAMS. Now, Executive Order 10290 sets out four categories of classified security information, does it not?

Mr. NELSON. That is right, sir.

Mr. WILLIAMS. "Top secret," "Secret," "Confidential," and "Restricted"; is that right?

Mr. NELSON. That is correct.

Mr. WILLIAMS. And it provides, does it not, Mr. Nelson, that in addition to bearing the designations "Top secret," "Secret," "Confidential,"

dential," or "Restricted," there shall also be placed on the back of any of the documents in question the words "Security information"; is that not right?

Mr. NELSON. That is right.

Mr. WILLIAMS. So that, as of September 1951, before the document was classified "Security information," it had to bear one of these four terms, "Top secret security information," "Secret security information," "Secret security information," "Confidential security information," or "Restricted security information"; is that not right?

Mr. NELSON. I do not think so, Mr. Williams. I think you said "before September."

Mr. WILLIAMS. No; after September 1951.

Mr. NELSON. That is true.

Mr. WILLIAMS. That was September 1951. If I said 1953 before, I am sorry; I did not intend to say that.

Mr. NELSON. That is right.

Mr. WILLIAMS. They had to bear that specific designation, by virtue of the Presidential Order No. 10290?

Mr. NELSON. That is correct.

Mr. WILLIAMS. And that order was made applicable to every agency in the executive branch, was it not?

Mr. NELSON. I believe so; yes; yes, sir.

Mr. WILLIAMS. And that order stayed in effect until December 15, 1953, did it not?

Mr. NELSON. That is right.

Mr. WILLIAMS. And then it was superseded by a new Presidential order, No. 10501; is that correct?

Mr. NELSON. Yes, sir.

Mr. WILLIAMS. And is it not a fact that 10501 changed the classification of security information to "Top secret," "Secret," and "Confidential"?

Mr. NELSON. That is correct.

Mr. WILLIAMS. And so each of the agencies had to go through their files and they had to either declassify restricted information, or put it in one of their other classifications; is that right?

Mr. NELSON. I do not believe that is absolutely right; no, sir.

It would be a physical impossibility.

Mr. WILLIAMS. At any rate, the fact of the matter is, Mr. Nelson, that as of December 15, 1953, there were only three categories of classified, security information; is that right?

Mr. NELSON. Insofar as Executive Order 10450 is concerned; yes, sir.

Mr. WILLIAMS. Now, Executive Order 10450, which came into effect on December 15 of 1953, specifically provides that any document which contains, which is either top secret, secret, or confidential, shall bear this inscription whenever practicable, and I am going to quote:

This material contains information affecting the national defense of the United States within the meaning of espionage laws, title XVIII, United States Code, sections 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law.

Is that not right?

Mr. NELSON. May I ask where you are reading, Mr. Williams?

Mr. WILLIAMS. I am reading from the order itself, section I. I think it is section I.

Mr. NELSON. I of section 4?

Mr. WILLIAMS. Yes.

Mr. NELSON. That is right.

Mr. WILLIAMS. And it provides that, does it not?

Mr. NELSON. That is right.

Excuse me. It provides that that should be done in certain situations.

Mr. WILLIAMS. Whenever practicable?

Mr. NELSON. Well, the heading of section I:—

Mr. WILLIAMS. Well, let us read that.

Mr. NELSON. All right.

Mr. WILLIAMS. It states:

When classified material affecting the national defense is furnished authorized persons in or out of the Federal service, other than those in the executive branch, the following notation in addition to the assigned classification marking shall, whenever practicable, be placed on the material or its container or on a written notification of its assigned classification.

Is that right?

Mr. NELSON. That is right.

Mr. WILLIAMS. Now, this order is still in effect, is it not, Mr. Nelson?

Mr. NELSON. Yes, sir.

Mr. WILLIAMS. Now, between September of 1951 and December 1953, December 15 of 1953, which are the dates with which we are concerned here, order No. 10291 was in effect; is that not right?

Mr. NELSON. 10290.

Mr. WILLIAMS. I am sorry; that is right. It was an order by President Truman; was it not, sir?

Mr. NELSON. Yes, sir.

Mr. WILLIAMS. And that order, insofar as it affected security information, specifically provides that the words "Security information" should be imprinted on the document next to its classification of "top secret, secret, confidential or restricted."

Mr. NELSON. That is right.

Mr. WILLIAMS. That order No. 10290 superseded the various orders that were outstanding before it in the various departments, did it not, insofar as security information was concerned?

Mr. NELSON. Yes, sir.

Mr. WILLIAMS. I have no further questions.

Mr. DE FURIA. We have no further questions, Mr. Chairman.

The CHAIRMAN. You may be excused, Mr. Nelson.

Call the next witness.

Mr. DE FURIA. Mr. James Juliana, Mr. Chairman.

The CHAIRMAN. Mr. Juliana, please come forward.

Will you raise your right hand and be sworn?

Do you solemnly swear that the testimony you will give in the matter now pending before the committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. JULIANA. I do, sir.

TESTIMONY OF JAMES N. JULIANA

The CHAIRMAN. Proceed with the examination, Mr. de Furia.

Mr. DE FURIA. Mr. Juliana, will you please give us your name, address, and present position?

Mr. JULIANA. James N. Juliana.

I reside in Silver Spring, Md.

I am an investigator for the Senate Permanent Subcommittee of Investigation.

Mr. DE FURIA. How long have you been an investigator with that subcommittee?

Mr. JULIANA. Since September of last year, 1953.

Mr. DE FURIA. Did you see General Zwicker at Camp Kilmer in the performance of your duties for the subcommittee?

Mr. JULIANA. Yes, sir.

Mr. DE FURIA. When, Mr. Juliana?

Mr. JULIANA. I believe it was February 13, 1954.

Mr. DE FURIA. That would be about 5 days before the General Zwicker hearing in New York, is that correct, sir?

Mr. JULIANA. Yes, sir.

Mr. DE FURIA. Did he, at that time, give you a copy of the Peress separation order?

Mr. JULIANA. Yes, sir.

Mr. DE FURIA. Mr. Juliana, you have heard some small talk at these hearings about a 2¼-page paper that Senator McCarthy presented during the course of the Army-McCarthy hearing; is that correct, sir?

Mr. JULIANA. Yes, sir.

Mr. DE FURIA. Did you ever see that paper?

Mr. JULIANA. I believe I saw the paper just prior to Senator McCarthy's introducing it during the Mundt committee hearings.

Mr. WILLIAMS. Not introduced, please.

Mr. JULIANA. Well, at the time he first spoke about it.

Mr. DE FURIA. We understand, sir.

Now, is that the first time you ever saw it, Mr. Juliana?

Mr. JULIANA. Yes, sir.

Mr. DE FURIA. That paper, did you ever see that paper after Senator McCarthy had it at the Army-McCarthy hearing?

Mr. JULIANA. I never saw the paper in this room during those hearings. It may have been handed back and forth once or twice subsequent to the first time they spoke about it.

Mr. DE FURIA. Other than the making of a copy of Senator McCarthy's 2¼-page paper for the Department of Justice, do you know whether any other copies were made?

Mr. JULIANA. I do not.

Mr. DE FURIA. Did you make any?

Mr. JULIANA. I did not.

Mr. DE FURIA. Are you sure, sir?

Mr. JULIANA. I am positive, sir.

Mr. DE FURIA. Do you know whether anybody else made any other copies, and I am asking you of your own knowledge, Mr. Juliana.

Mr. JULIANA. I would not know.

Mr. DE FURIA. Do you know whether any person distributed copies to the press?

Mr. JULIANA. I do not know.

Mr. DE FURIA. Did you see distributing what purported to be copies to the press?

Mr. JULIANA. I did not.

Mr. DE FURIA. Mr. Juliana, going back to the General Zwicker incident once again, you got a copy of the Peress separation order on February 13, did you not?

Mr. JULIANA. Yes, sir.

Mr. DE FURIA. What did you do with that, sir?

Mr. JULIANA. If my recollection is clear, I personally held on to that. However, I did show it, I believe, to Mr. Cohn and to Mr. Carr.

I believe the day that General Zwicker testified I handed it, or I personally saw that someone at the head table was given that letter, either Senator McCarthy or Mr. Cohn.

Mr. DE FURIA. When did you show it to Mr. Cohn and Mr. Carr? How long before the General Zwicker hearing?

Mr. JULIANA. Oh, it was only a day or two after I received it from the general.

Mr. DE FURIA. Were you at the hearing?

Mr. JULIANA. Yes, sir.

Mr. DE FURIA. Did you have the paper with you at that time, your copy of the Peress separation order?

Mr. JULIANA. I believe I did; yes, sir.

Mr. DE FURIA. Didn't you produce it and hand it to Senator McCarthy?

Mr. JULIANA. I handed it to either Senator McCarthy or Mr. Cohn, if my recollection is clear.

Mr. DE FURIA. And what did either Senator McCarthy or Mr. Cohn do as you handed the Peress separation paper to them, do you remember?

Mr. JULIANA. No, I don't. I guess they read it. I don't place any significance on what happened after I gave it to them.

Mr. DE FURIA. You can't remember; is that right?

Mr. JULIANA. That is right.

Mr. DE FURIA. You did hand it to either one or the other? That is the best of your recollection?

Mr. JULIANA. That is right.

Mr. DE FURIA. That is all of our questions.

Mr. Williams, you may examine.

Mr. WILLIAMS. Mr. Juliana, before coming with the subcommittee, you were a special agent with the Federal Bureau of Investigation, were you not?

Mr. JULIANA. Yes, sir.

Mr. WILLIAMS. For how long did you serve in that capacity?

Mr. JULIANA. Approximately 6½ years.

Mr. WILLIAMS. Where did you serve as a special agent for the Federal Bureau of Investigation?

Mr. JULIANA. For a short while in Springfield, Ill., and the major part of the time in New York City.

Mr. WILLIAMS. When did you resign from the Bureau?

Mr. JULIANA. In August of 1953.

Mr. WILLIAMS. Is that just prior to your coming with the committee?

Mr. JULIANA. It was some few weeks before I came with the committee.

Mr. WILLIAMS. Now, incident with your duties as an investigator for the subcommittee, you interviewed, you stated to Mr. de Furia, General Zwicker, is that right?

Mr. JULIANA. Yes, sir.

Mr. WILLIAMS. Did General Zwicker recount to you the circumstances surrounding the discharge of Irving Peress on February 2?

Mr. JULIANA. He did.

Mr. WILLIAMS. Did he tell you that he had received orders from Washington on this?

Mr. JULIANA. He did.

Mr. WILLIAMS. Did he indicate to you that he had talked to anyone in Washington on this?

Mr. JULIANA. He indicated to me that he had been in frequent contact with Washington on the former Major Peress matter.

Mr. WILLIAMS. Did he indicate to you whether or not he had had contact with Washington prior to his action of February 2?

Mr. JULIANA. He did so indicate.

Mr. WILLIAMS. Did he indicate to you that he was opposed to this action?

Mr. JULIANA. He did.

Mr. WILLIAMS. Did he tell you these things freely?

Mr. JULIANA. He did.

Mr. WILLIAMS. Did you relate these things to the chairman of the committee?

Mr. JULIANA. I did.

Mr. WILLIAMS. Did you relate these things to the chairman of the committee prior to General Zwicker's appearance at Foley Square on the date in question?

Mr. JULIANA. I did.

Mr. WILLIAMS. I have no further questions.

Mr. DE FURIA. Mr. Juliana, can you say positively that General Zwicker said "Washington" instead of "Governors Island" or "First Army"?

Mr. JULIANA. He left the definite impression in my mind that he had been in contact with the Pentagon, and I assumed that to be Washington.

Mr. DE FURIA. Can you say, under oath, that General Zwicker mentioned Washington or the Pentagon, or might he have said Governors Island or the First Army?

Mr. JULIANA. I will say under oath that, to the best of my recollection, it was the Pentagon.

Mr. DE FURIA. Can you remember any particular words used by General Zwicker referring to the Pentagon?

Mr. JULIANA. The Pentagon. He used the words "The Pentagon."

Mr. DE FURIA. Is that all you can remember about it?

Mr. JULIANA. No. I can remember further that he said that—and I almost quote this—"I had been in frequent contact with the Pentagon."

That is almost a quote. Now, I can't say it is a definite quote.

Mr. DE FURIA. Did he mention that it went through the First Army to the Pentagon or direct?

In other words, did he say he contacted the Pentagon or was the Pentagon contacted through the First Army?

Mr. JULIANA. He did not say that the Pentagon was contacted through the First Army. However, in discussing this matter—I talked with him about an hour—I was under the definite impression that his immediate superior was the First Army.

Mr. DE FURIA. Where are your notes about this conversation, Mr. Juliana?

Mr. JULIANA. My notes have been destroyed, but I dictated a memo for the file.

Mr. DE FURIA. When did you dictate the memo?

Mr. JULIANA. Excuse me. I didn't dictate it. I'll take that back. I typed it myself the next day, which was a Sunday. I remember that, sir, clearly.

Mr. DE FURIA. That is all we have, Mr. Chairman.

The CHAIRMAN. You are excused, Mr. Juliana.

Mr. JULIANA. Thank you, sir.

Mr. WILLIAMS. Mr. Chairman, I can report to you, sir, that George Anastos is in the room, available for Mr. de Furia to call.

The CHAIRMAN. Mr. Anastos. Raise your right hand and be sworn.

Do you solemnly swear the testimony given in the matter now pending before the committee will be the truth, the whole truth, and nothing but the truth.

Mr. ANASTOS. I do.

The CHAIRMAN. So help you God?

Mr. ANASTOS. So help me God.

The CHAIRMAN. You may examine.

TESTIMONY OF C. GEORGE ANASTOS

Mr. DE FURIA. Will you give us your name, address, and official position, sir?

Mr. ANASTOS. C. George Anastos—C as in Cosmos—C-o-s-m-o-s. I am assistant counsel with the Senate Permanent Subcommittee on Investigations.

Mr. DE FURIA. And you have been how long, sir?

Mr. ANASTOS. Since a year ago this month.

Mr. DE FURIA. Did you have a telephone conversation with General Zwicker, I believe in the early part of January 1954, about Peress?

Mr. ANASTOS. I telephoned General Zwicker on January 22 of this year.

Mr. DE FURIA. January 22?

Mr. ANASTOS. Yes, sir.

Mr. DE FURIA. Yes.

Mr. ANASTOS. Concerning the Peress case.

Mr. DE FURIA. What was the conversation, please?

Mr. ANASTOS. Well, I told him—I told General Zwicker—that we had information that there was a card-carrying Communist, who was a major, probably in the Medical Corps, at Camp Kilmer.

General Zwicker indicated that he knew who we had—whom we had in mind.

Mr. DE FURIA. Did he mention the name?

Mr. ANASTOS. At first he did not mention the name.

Mr. DE FURIA. Yes.

Mr. ANASTOS. As I recall, he asked me if I knew his name, and I replied that I didn't have the name before me, that maybe somebody else in the committee may have known, had the name, but that I did not; and he raised some objection to talking on the telephone, and I suggested to him that if he had any question as to who I was he could telephone back at the office where I was.

As I remember, about an hour later he returned the call. He called me back and he said he had the files before him or he had looked at the files, and he proceeded to give me the name of Peress, his serial number, the dates that he was called into the service. He told me that they had information, that the Army had information, that Major Peress was, had been—was or had been—a member of the Communist Party; that his wife, Elaine, was a member of the party, that she held Communist Party meetings at their home.

He also stated that Major Peress had been a Communist Party organizer and probably gave me a few more details along those lines.

Then he added that in August of 1953 Peress had refused to answer a loyalty questionnaire because he invoked his constitutional privilege not to answer those questions.

General Zwicker also mentioned Peress, who was then captain, was promoted to the position of major in November of 1953, and concluded by saying that he had received word from the Department of the Army that Peress was to be separated from the service within 90 days with an honorable discharge.

As I recall, General Zwicker also mentioned to me that—there was some question as to forcing Major Peress out of the service—that they would try to persuade him to separate himself from the service. I don't remember exactly what he said, but there was some discussion as to that.

Mr. DE FURIA. Was that in order to avoid a court-martial?

Mr. ANASTOS. I don't know. I didn't go into it.

Mr. DE FURIA. And is this all in the same telephone conversation?

Mr. ANASTOS. Yes, sir.

Mr. DE FURIA. You may continue.

Mr. ANASTOS. The next day, next morning, General Zwicker telephoned me again and told me that he had just received word from the Department of the Army that Major Peress was to be separated within 90 days with an honorable discharge.

Mr. DE FURIA. Was that a voluntary call on the part of General Zwicker?

Mr. ANASTOS. Yes, sir.

Mr. DE FURIA. Did you find him cooperative?

Mr. ANASTOS. For my purposes; yes, sir. He was.

Mr. DE FURIA. Was Mr. Cohn familiar with the fact about which you have just testified when he, Mr. Cohn, examined General Zwicker at the hearing on February 18, 1954?

Mr. ANASTOS. Yes, sir; he was.

Mr. DE FURIA. Was Senator McCarthy familiar with those facts?

Mr. ANASTOS. Well, sir, I didn't discuss this matter with Senator McCarthy because I dealt primarily with Roy Cohn and with Frank Carr.

I do recall in this case I pretty much discussed it with Roy—because he had been the one who originally—he was the chief counsel.

Mr. DE FURIA. Did you make a report of your conversation with General Zwicker and the information you received from him?

Mr. ANASTOS. Yes, sir.

Mr. DE FURIA. Was that in the file?

Mr. ANASTOS. I submitted it to, memorandum, two memoranda, to Frank Carr.

Mr. DE FURIA. In order to clear the skirts of everyone, let me ask the same question I have asked others.

Did you have anything to do with making copies of the 2¼-page paper?

Mr. ANASTOS. Absolutely not, sir.

Mr. DE FURIA. Did you see anybody make copies?

Mr. ANASTOS. No, sir.

Mr. DE FURIA. Did you see anybody distribute them?

Mr. ANASTOS. No, sir.

Mr. DE FURIA. You had nothing whatever to do with it?

Mr. ANASTOS. I had nothing to do with it in any shape or form.

Mr. DE FURIA. That concludes our examination, sir.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. I have no questions of this witness, Mr. Chairman.

The CHAIRMAN. Does any committee member have any questions?

You may be excused.

Apparently no one wants to ask you any questions.

Mr. WILLIAMS. Mr. Chairman, you recall this morning I raised a question of a legal point on this classification question.

I have prepared memoranda for members of the committee on this point, which I should like to submit at this time.

Mr. CHADWICK. May I request that Mr. Williams include us in the people to get copies?

Mr. WILLIAMS. I have copies for you.

Mr. CHADWICK. Have you yet been able to give us a copy of the memorandum —

Mr. WILLIAMS. I haven't been able to leave this room to go back to my office to get them, but I told you and Mr. de Furia that I would get one for you before the sun goes down.

Mr. CHADWICK. Thank you, sir.

The reason I persisted in it is that I will have to make a request of the chairman in a few minutes on that subject.

The CHAIRMAN. You may submit them to the committee.

(The document referred to was distributed to the members of the committee).

The CHAIRMAN. There was a matter with respect to the situation in the Senate in connection with the subcommittee of the Committee on Rules which is more particularly designated as the Subcommittee on Privileges and Elections as to what constituted membership in that committee; what would be the power of the chairman to fill vacancies in the event he had resignations; matters connected with the legal and parliamentary situation affecting that subcommittee.

As I recall, the matter was to be presented to Mr. Charles Watkins, the Parliamentarian.

I was advised by, I think, a Member of the Senate that he had contacted him and that he was not well and he doubted that he was in physical condition to come here and testify.

As I remember during the discussion before the committee, there was sort of an understanding that we could submit interrogatories to him, I think probably joint interrogatories on behalf of the committee and Senator McCarthy, and permit him to give his opinion in that way and have them made a part of the record in this case.

Is that still the situation, Mr. Williams?

Mr. WILLIAMS. May I confer with Senator McCarthy first?

(Mr. Williams conferred with Senator McCarthy.)

Mr. WILLIAMS. We are perfectly agreeable to anything you want to do along that line.

The CHAIRMAN. If you will prepare some of the interrogatories you think ought to be submitted to him, and serve them upon the committee through its counsel, then we can probably agree upon the interrogatories that ought to be submitted.

Mr. WILLIAMS. My suggestion is that——

The CHAIRMAN. I say now to Mr. Williams and Senator McCarthy, Do you have any witnesses or other evidence of any kind or description you think the committee could secure that should be presented to this committee and to the Senate?

Mr. WILLIAMS. I would like to call the attention—we have no witnesses, to answer your direct question.

The CHAIRMAN. We have taken the position, as I have stated frequently at these hearings, that the committee wanted to get all the evidence that could pass the standards that we had set up, no matter whether it helped or hurt Senator McCarthy. We wanted to get the full statement of all the facts available, all the evidence available, and as much law on it as we could get covering all phases of the investigation, and of the charges that have been filed which we are now considering. So that is why I renewed this request.

Mr. WILLIAMS. I would like that there be inserted into the record, Mr. Chairman, some colloquy that appears in the Congressional Record of July 31, 1954, wherein the present chairman of the Subcommittee on Privileges and Elections reports certain activities of the committee which had preceded his—I am not going to read this because it would take too long—but wherein he reports that that committee had a mail drive or mail cover placed on Senator McCarthy here and his own comments on that, and also his comments upon the report itself which is in evidence here.

I think that is germane to this inquiry. It is part of the record. It is page 1281, Saturday, July 31, 1954; the remarks of Senator Jenner, the present chairman of the Committee on Rules and Administration.

The CHAIRMAN. I think I recall the remarks made by Senator Jenner. By offering that, do you now raise any questions as to whether or not the report was actually presented by the subcommittee to the full Committee on Rules?

You have been referring all the way through to the report, and I assume from that that you were in the position that you thought a report actually had been made, and if there is any question about that, I think we probably could get some evidence on that point.

Mr. WILLIAMS. I am not challenging; I am not in that area, if I understand your question.

The CHAIRMAN. If it is raised——

Mr. WILLIAMS. All I want to do is to introduce the remarks of Senator Jenner.

The CHAIRMAN. For the purpose of showing that no report was made? If that is the purpose, the committee ought to exhaust all possibilities of getting information on that point. I think there is a possibility of getting some information.

If that is not the fact, counsel might be willing to stipulate that this document had actually been given to the chairman of the full

committee, prior to the reorganization of the Senate in 1953, when the Republicans took over.

Mr. WILLIAMS. I cannot stipulate that the full committee ever adopted the report, because I understand the fact to be that it did not.

The CHAIRMAN. I would not go so far as to say it had actually been finally adopted, but the point is that they actually had that report called to their attention—that is, the full committee, by the subcommittee.

Mr. WILLIAMS. We do not take the position that the full committee ever authorized the final report.

The CHAIRMAN. I do not know whether it has ever authorized it or not, but would you go so far as to say that they gave them a copy of it, that the report was transmitted to the chairman of the full committee with a letter of transmittal from the clerk of the committee, at the instance of Senator Hennings, who was then the chairman of the subcommittee?

Mr. WILLIAMS. I do not know what the fact is. I would like to talk with the Senator.

The CHAIRMAN. I think we can get information on that point. That is the reason I am calling for information about that, because of the fact that you have apparently challenged the statement. Of course, it is not important that it was filed. Ordinarily it is not so considered, and you need not bring in that evidence or go any further, if it was understood that it was actually recorded.

Mr. WILLIAMS. Our position on this, Mr. Chairman, is this—and I understood your information was that the report was handed to the members of the full committee. We certainly do not want to burden the record through calling witnesses to establish that. Our position, of course, is that the report was never debated, either by members of the Committee on Rules and Administration or by the Senate.

The CHAIRMAN. Well, I think that is probably true. I do not contend for that. But we do have a copy of the letter, a photostatic copy of the letter that was sent, I think, to Senator Hayden, the then acting chairman of the Rules Committee, and of which copies were transmitted. Copies of the report were transmitted to the full committee. We could bring that into the record: and it is a photostatic copy.

We will call a witness, I think, from the Senate, if necessary, but I was going along, by reason of the position you had taken, of thinking that probably we need not do that.

Mr. WILLIAMS. No.

The CHAIRMAN. We do not think we need do that.

Mr. WILLIAMS. We have gone as far as we can, in the statement that the report was physically handed to you.

The CHAIRMAN. If there is any doubt about it, we can produce the letter, and establish the fact that three copies were transmitted with the report, which was received here in evidence for certain limited purposes; that they were actually transmitted to the full committee, and that they were found in the files.

Mr. Chadwick, have you any other matters to call to the committee's attention before we recess?

Mr. CHADWICK. Mr. Chairman, as a matter of housekeeping, or in the presentation of the case, I first of all would like to ask the chairman's permission to submit, at as early a time as possible, hereafter, a

brief or briefs on the questions to which Mr. Williams has addressed himself, which have already been delivered—one of them—to us within a few minutes, and the other of which is to come. Copies of those briefs will be handed to Mr. Williams, at the same time that they are handed to the chairman; and, unless you want to have another session—which I think you do not—I am asking permission now to give those to you, to become a supplemental part of the record of the case—the original briefs.

Mr. WILLIAMS. I have no objection to that.

I have something I should like to call to the Chair's attention, as representing our views on collateral matters, that I think I could bring up now.

The CHAIRMAN. The request of counsel will be granted.

I will state this. The committee is in a position, or takes the position, that they ought to get the fullest information possible, both on the facts and on the law, and it will appreciate the filing of a brief, and submission of authorities, which will aid it in preparing its report, and which, of course, we believe can be debated by the United States Senate when it comes to consider the report.

Mr. WILLIAMS. Mr. Chairman—

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Since I understand that all the evidence is in—

Mr. CHADWICK. Mr. Williams, I am sorry. You interrupted me unintentionally. There is a second point I desire to raise.

Mr. WILLIAMS. I am sorry.

The CHAIRMAN. Proceed.

Mr. CHADWICK. Mr. Jex, who has cooperated with us throughout this case, very effectively, at our request sought to obtain a certified copy of a document which we felt was important. He succeeded in getting a certified copy, but not of the material that we asked for; and I am told by him, now, that it is not practical to get that within the next few minutes or before adjourning time.

I should like, in order to save the committee's time, to have permission, again, to submit that to the committee. I would submit it, also, to Mr. Williams.

Mr. WILLIAMS. What is the document?

Mr. CHADWICK. It is a certification of orders—the certification of an order of the Finance Department—the disbursing officer, I mean.

The CHAIRMAN. You mean, of the United States Senate?

Mr. CHADWICK. Of the United States Senate.

The CHAIRMAN. That is with reference to the payment of salaries and directing the payment of the salaries prior to the Republican reorganization of the Senate in January 1953?

Mr. CHADWICK. That is correct. Mr. Williams says that is all right.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. I wanted to be sure we were talking about the same thing, as to the thing that was to be submitted. The Chair will rule that the document when obtained will be printed at this place in the record.

UNITED STATES OF AMERICA

UNITED STATES GENERAL ACCOUNTING OFFICE

Pursuant to the provisions of sections 306 and 311 (e) of the Budget and Accounting Act, 1921, 42 Stat. 24, 25; 31 U. S. C. 46, 52 (e), and to 4 CFR 12.2 (a),

I hereby certify that the annexed document, is a true copy of the official document now on file in the United States General Accounting Office in the following case: ALLEN J. GOODMAN, et al.

In witness whereof, I have hereunto set my hand and caused the seal of the United States General Accounting Office to be affixed this 17th day of September in the year 1954 at Washington.

By direction of the Comptroller General of the United States.

[SEAL]

E. C. BOHANNON,
United States General Accounting Office.

United States Senate payroll for the month of January 1953 for services rendered the Subcommittee on Privileges and Elections of the Committee on Rules and Administration under authority of S. Res. 333, agreed to June 12, 1952

Name	Designation	Tax ex- emptions	Basic annual salary	Gross annual salary	Gross earned during month ¹	In- come tax deduc- tion	Retire- ment deduc- tion	Net amount paid
Goodman, Allen J.	Assistant counsel.	1	\$3,840	\$6,672.85	\$556.07	\$99.07	-----	\$457
Kramer, Samuel H.	Assistant counsel.	3	3,540	6,194.89	516.24	68.24	-----	448
Litwin, Genevieve.	Stenographer.	1	2,700	4,856.61	404.71	70.71	-----	334
Johnson, Grace E.	Clerk, to Jan. 17.	2	5,340	8,990.07	424.53	71.05	\$25.48	328
Shortley, Robert L.	Investigator.	1	5,040	8,552.84	712.73	128.73	-----	584
Stout, Ruth G.	Administrative clerk.	3	2,640	4,761.00	396.75	45.75	-----	351
Vaughan, Mary L.	Clerical assistant.	1	3,120	5,525.75	460.47	82.47	-----	378
Philbin, Richard E.	Investigator, from Jan. 21.	4	4,680	8,005.36	222.37	30.37	-----	192
Strain, Mary L.	Clerical assistant from Jan. 23.	2	2,340	4,283.04	95.17	13.17	-----	82
Warc, Wellford H.	Assistant counsel, to Jan. 27.	4	6,120	10,068.45	755.13	109.13	-----	646
Warc, Wellford H.	Counsel, from Jan. 28.	4	7,320	11,646.00	97.05	15.05	-----	82
Total.	-----	-----	-----	-----	4,641.22	733.74	25.48	3,882

¹ Including additional compensation as authorized by law.

I certify that the above services were rendered for the use of the Senate, and I further certify that the employment of the persons named on the within payroll is not prohibited by any provision of law limiting the availability of the appropriation involved.

Approved:

GRACE E. JOHNSON, *Clerk.*

CARL HAYDEN, *Chairman.*

The CHAIRMAN. With respect to the report from the Subcommittee on Privileges and Elections, covering the investigation under Resolution 187, known as the H-H-H report, that was already received in evidence for limited purposes.

Since it has been discussed as to what actually was being done on it, I think, in fairness to the Senate, it ought to be received, in addition to just the question of jurisdiction as to what activities were being carried on under that, and what was the subject matter of the investigation.

It has already been referred to by Mr. Williams in one of his statements here and arguments, and I think it would throw light on the activities and matters that were under investigation.

And it is not received with any idea, or for the purpose of either proving true or false any of the matters which were investigated by that committee.

I take it there is no objection.

Mr. WILLIAMS. Are you talking about the report?

The CHAIRMAN. I am talking about the H-H-H report of the Subcommittee on Privileges and Elections of the Rules Committee of the United States Senate.

Mr. WILLIAMS. Yes, sir. We do not concede that it is a complete report of its activities, but we do not object to its going in for what it is.

The CHAIRMAN. It is not to be considered as either proof or disproof of any of the so-called charges that we are investigating, whether they are actual charges or not.

In other words, we do not expect it to be received as evidence on the merits of any of those matters which we are investigating.

Mr. WILLIAMS. Yes, sir. I wanted to call this to the Chair's attention, if all the evidence is in, and I assume it is.

We have nothing further to offer and I understand counsel on the other side has nothing further to offer. Is that correct?

Mr. CHADWICK. That is correct, Mr. Williams.

Mr. WILLIAMS. Now, Mr. Chairman—

The CHAIRMAN. I would say that Senator Stennis has put a question to the Chair as to whether or not we have all the matters that the committee would like to have in the record.

I wish he would indicate what he has in mind if there are any matters that he thinks ought to be in, so that we would know.

Senator STENNIS. I have asked for information as to just what proof was in with reference to these designations of the so-called classified documents.

I did not know whether there was documentary evidence introduced by the gentleman who testified a few minutes ago.

Was there documentary evidence introduced by Mr. Nelson?

Mr. DE FURIA. We had covered that.

Senator STENNIS. I want to ask this question of counsel of either group of attorneys: If they are satisfied that sufficient proof is in with reference to those documents and their meaning.

Mr. WILLIAMS. I think so, Senator. We have submitted a brief on this subject which you have obviously not had a chance to read because I have just handed it to you.

Senator STENNIS. There is information in the record, then?

Mr. WILLIAMS. Yes, sir.

Senator STENNIS. Mr. Chadwick?

Mr. CHADWICK. Yes, sir. We had submitted copies of every supporting document of which we had information, except possibly the one which the witness read today, and that has now been read into the record.

Senator STENNIS. That satisfies me, Mr. Chairman.

Mr. WILLIAMS. Mr. Chairman.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. The matter I would like to address to the Chair's attention, is this:

As I understand it, the investigative function of the committee is now at an end formally, as least, insofar as these proceedings are concerned, and the committee now passes to its decisional functions, whatever form that will take, and that, of course, is up to the committee.

Now, I feel that a proceeding of this kind, as I think everybody who has participated in it does, is a judicial proceeding, or, at least, a quasi-judicial proceeding, and I should like to suggest at this time to the committee that the spirit of the act of Congress called the Administrative Procedures Act be followed insofar as the decisional function

of this committee is concerned, the spirit and the letter of the Administrative Procedures Act, which was passed by the Congress signed by the President 8 years ago.

It provides that no officer or employee or agent who has been engaged in the performance of investigative or prosecuting functions having any agency in any case shall in that or a factually related case participate or advise in the decision.

Now, obviously, in the decisional functioning of this committee, in all probability, if it follows precedent, a report will be written.

I feel that this proceeding, or, if I may say so, Mr. Chairman, has been an advocacy proceeding.

Mr. Bozelle and I, within the limitations of our capacity, have tried to present the law and the facts on Senator McCarthy's side.

Because it is of the nature of a judicial proceeding and because there are accusations here, counsel for the other side in the role are applicants and have taken positions contrary to our position on the law and of the facts and in one instance on a whole charge.

So that it seems to me that in the interest of keeping this a completely judicial proceeding, I do not believe that it would be reasonable to ask counsel participating in the decisional function in the drafting of a preparatory or preliminary report, because I feel it would be calling upon them to do a superhuman task; namely, taking themselves outside of their role as advocates, asking them to pass upon their own briefs in relationship to ours, and that, therefore, my suggestion is that at this stage counsel, independent counsel be brought in to read this record and consult with the committee in its decisional function.

Now, at the outset of this proceeding, you will recall, Mr. Chairman, that it was the feeling of Mr. Bozelle and myself that we could not be in a position of being employees of this committee, and at the same time, defense counsel for Senator McCarthy. I felt that accepting compensation from this committee would be in direct conflict with my role as defense counsel, and accordingly I declined to do so.

I respectfully suggest, and this is not meant to be critical of anyone, that independent counsel come in at this point with the funds that are available as a result of our declination of compensation, that independent counsel be selected by the committee to help pass upon the conflicting theories of law and the conflicting arguments on facts that have been advanced between our side of the table and counsel who have been preparing the charges on the other side of the table.

I think that it is within the spirit of the Administrative Procedure Act that this should be done. I think it is within the spirit of this proceeding as a quasi-judicial proceeding where there are two sides, one side putting vehemently forth their side and the other side, counsel for the committee has assumed the role of prosecution in many instances, and I am not critical of him. It is impossible not to have a proceeding of this kind an adversary proceeding. We would be unrealistic if it were not an adversary proceeding, but I do not think that it is realistic to expect that any lawyer can be superhuman enough to try a case and then sit as judge or sit in the council wherein the judgments are rendered.

For that reason, I respectfully suggest that both the theory and the practice of the Administrative Procedure Act be followed, that independent counsel come in, read this record, read the conflicting theories of law, read the conflicting views of fact that have been advanced by

counsel on both sides, and serve as real counsel independent to this committee, without having been in any instance in the role of advocate.

The CHAIRMAN. Well, I will say to you that so far as the committee is concerned, it stated its position very clearly in the opening statement made by the chairman. That statement was submitted to the members of the committee and that is the view of the committee.

That is contrary to what you have said. I am not going to reread it. I think it is well known that we took the position that we were a semijudicial committee. We adopted rules of evidence in order to screen material that came in, but we considered it our duty first of all, to make an investigation of the facts.

We have our staff people, including our attorneys, making that investigation, gathering together all the facts which helped or hurt Senator McCarthy. We wanted it for the purpose of being able to advise the Senate, and we have done the very best we could so that we would have all the facts before the Senate when we finally get through.

Mr. WILLIAMS. Now, would you set—

The CHAIRMAN. I want to say we stated it very clearly. I don't know whether somebody can give me a copy of that now. I think it would be good to read it again, to refresh everybody's recollection on the stand we took.

May I say we were absolutely sincere in that, and I don't think we have changed our position for a moment.

At the risk of boring some of the people who have heard it before, I am going to read it again:

"At the outset of this hearing, the committee desires to state in general terms what is involved in Senate Resolution 301 and the Senate order on it, which authorized the appointment of the select committee to consider in behalf of the Senate the so-called Flanders resolution of censure, together with all amendments proposed to the resolution.

"The committee, in the words of the Senate order, was 'was authorized to hold hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate, to require by subpoena, or otherwise, the attendance of such witnesses and the production of such correspondence, books, papers, and documents, and to take such testimony as it deems advisable, and that the committee be instructed to act and make a report to this body prior to the adjournment sine die of the Senate in the 2d session of the 83rd Congress.' "

That is the end of the quote from the order, which was the charter for this committee.

"That is a broad grant of power, carrying with it a heavy responsibility—a responsibility which the committee takes seriously. In beginning its duties, the committee found few precedents to serve as a guide. It is true that there had been other censure resolutions before the Senate in the past, but the acts complained of were, for the most part, single occurrences which happened in the presence of the Senate or one of its committees. Under such circumstances, prolonged investigations and hearings were not necessary.

"It should be pointed out that the some forty-odd alleged instances of misconduct on the part of Senator McCarthy referred to this committee are involved and complex, both with respect to matters of fact and law. With reference to the time element, the incidents are alleged to have happened within a period covering several years. In addition,

3 Senate committees already have held hearings on 1 or more phases of the alleged incidents of misconduct. Obviously, with all this in mind, the committee had good reason for concluding it faced an unprecedented situation which would require adoption of procedures, all within the authority granted it in the Senate order, that would enable it to perform the duties assigned within the limited time given by the Senate.

"The committee interprets its duties, functions, and responsibilities under the Senate order to be as follows:

"1. To analyze the charges set forth in the amendments and to determine:

"a. If there were duplications which could be eliminated.

"b. If any of the charges were of such a nature that even if the allegations were established as factually true, yet there would be strong reasons for believing that they did not constitute a ground for censure.

"2. To thoroughly investigate all charges not eliminated under No. 1 in order to secure relevant and material facts concerning them and the names of witnesses or records which can establish the facts at the hearings to be held.

"In this connection, the committee believes it should function as an impartial investigating agency to develop by direct contacts in the field and by direct examination of Senate records all relevant and material facts possible to secure.

"When Senate Resolution 301 and amendments offered were referred to the committee, the committee interprets this action to mean that from that time on, the resolution and charges became the sole responsibility of the Senate. To state it another way, the Senator, or Senators, who offered Resolution 301, and proposed amendments thereto, have no legal responsibility from that point on for the conduct of the investigations and hearings authorized by the order of the Senate. The hearings are not to be adversary in character. Under this interpretation, it became the committee's duty then to get all the facts and material relevant to the charges irrespective of whether the facts sustained the charges or showed them to be without foundation.

"The foregoing statement seems to be necessary in view of a widespread misunderstanding that the Senator who introduced the resolution of censure into the Senate and the Senators who offered amendments thereto, setting up specific charges against the Senator from Wisconsin, are the complaining witnesses, or the parties plaintiff, in this proceeding. That is not true, as has been explained. However, because of the fact that they had made some study of the situation, the committee did give them an opportunity to submit informational documentation of the charges they had offered. Also they were asked to submit the names of any witnesses who might have firsthand knowledge of the matters charged and who could give relevant and material testimony in the hearings.

"Since matters of law also will be involved in reaching evaluation of the facts developed, pertinent rules of the Senate and sections of law, together with precedents and decisions by competent tribunals, should be briefed and made a part of the hearing record, the committee believes.

"3. To hold hearings where the committee can present witnesses and documentary evidence for the purpose of placing on record, for

later use by the Senate the evidence and other information gathered during the preliminary investigation period, and for the development of additional evidence and information as the hearings proceed.

"The resolution of censure presents to the Senate an issue with respect to the conduct and possible punishment of one of its Members. The debate in the Senate preceding the vote to refer the matter to a select committee made it abundantly clear that the proceedings necessary to a proper disposal of the resolution and the amendments proposed, both in the Senate and in the select committee, would be judicial or quasi-judicial in nature, and for that reason should be conducted in a judicial manner and atmosphere, so far as compatible with the investigative functions of the committee in its preliminary and continuing search for evidence and information bearing on all phases of the issues presented.

"Inherent in the situation created by the resolution of censure and the charges made, is the right of the Senator against whom the charges were made to be present at the hearings held by the select committee. He should also be permitted to be represented by counsel and should have the right of cross-examination. This is somewhat contrary to the practice by Senate committees in the past, in hearings of this nature, but the present committee believes that the accused Senator should have these rights. He or his counsel, but not both, shall be permitted to make objections to the introduction of testimony, but the argument on the objections may be had or withheld at the discretion of the chairman. The Senator under charges should be permitted to present witnesses and documentary evidence in his behalf, but of course, this should be done in compliance with the policy laid down by the committee in its notice of the hearing, which is a part of this record.

"In general, the committee wishes it understood that the regulations adopted are for the purpose of insuring a judicial hearing and a judicial atmosphere as befits the importance of the issues raised. For that reason, and in accordance with the order, the committee believes to be the sentiment of the Senate, all activities which are not permitted in the Senate itself will not be permitted in this hearing."

That had reference to the physical activities, and so on. That took care of the television, radio, and pictures being taken during the period of the hearing.

"4. When the hearings have closed, to prepare a report and submit it to the Senate. Under the order creating this committee, this must be done before the present Senate adjourns sine die.

"By way of comment, let me say that the inquiry we are engaged in is of a special character which differentiates it from the usual legislative inquiry. It involves the internal affairs of the Senate itself in the exercise of a high constitutional function. It is by nature a judicial or semijudicial function, and we shall attempt to conduct it as such. The procedures outlined are not necessarily appropriate to congressional investigations and should not, therefore, be construed as in any sense intended as a model appropriate to such inquiries. We hope what we are doing will be found to conform to sound senatorial principles and traditions in the special field in which the committee is operating.

"It has been said before, but it will do no harm to repeat, that the members of this committee did not seek this appointment. The quali-

fications laid down by the Senate order creating the commission, said the committee should be made up of 3 Democrat Senators and 3 Republican Senators. This was the only condition named in the order. However, in a larger sense the proper authorities of the Senate were charged with the responsibility of attempting to choose members of the Senate for this committee who could, and would, conduct a fair and impartial investigation and hearing. Members of the committee deemed their selection by the Senate authorities as a trust. We realize we are human. We know, and the American people know, that there has been a controversy raging over the country through a number of years in connection with the activities of the Senator against whom the resolution is directed. Members of this committee have been conscious of that controversy; they have seen, heard, and read of the activities, charges, and countercharges, and being human, they may have at times expressed their impressions with respect to events that were happening while they were happening. However, each of the Senators who make up this special select committee are mature men with a wide background of experience which should enable them to disregard any impressions or preconceived notions they may have had in the past respecting the controversies which have been going on in public for many years.

"We approach this matter as a duty imposed upon us and which we feel that we should do our very best to discharge in a proper manner. We realize the United States Senate is on trial, and we hope our conduct will be such as to maintain the American sense of fair play and the high traditions and dignity of the United States Senate under the authority given it by the Constitution."

Now, the special request made by counsel will be considered by the committee.

However, I think the committee has done its level best in making the rulings in accordance with the old, established rules of evidence developed through the centuries, in Great Britain or England, and in this country, as best we could, and in accordance with those traditions and those rules of evidence.

We have tried to interpret them fairly. At times it may have been thought by some that we were wrong about our construction, our interpretation.

That, of course, occurs in every hearing in which there is some controversy.

To my knowledge, in all cases I ever tried as a judge, I never did please everybody. My rulings at times were thought to be wrong and they appealed to the Supreme Court, as they had a right to do.

On this particular situation, the Senate is the final authority. We can only make our report, and the record is there, and, as I have said frequently, the Senate, itself, has no rule respecting materiality or relevancy.

Senator McCarthy and/or those who take the position that he should not be censured or want to defend his position are entitled to bring in anything that the Senate will let them bring in, and it seems to me, under the general province of the authority there, they can take about anything and bring in everything under the sun before the Senate.

However, in order to do our job, within the time we had, we had to adopt some rules that would govern the screening of evidence, and that is what we have tried to do here, and it is obvious in any case of

that kind we probably would have some exceptions or some differences of opinion with respect to what was the proper evidence and what would be the proper ruling.

So, as I say, the committee will take that matter under advisement.

Mr. WILLIAMS. May it be considered as a formal motion, Mr. Chairman?

The CHAIRMAN. It may be considered as a formal motion, which we will dispose of probably in executive session, and I do not know whether we will announce the result immediately, or whether it will come in the report. I cannot say as to that.

Now, members of the committee are here and if they want to take exception to this, or if they want to consider it further in executive session, that may be done.

Mr. WILLIAMS. May I ask, Mr. Chairman, if you will advise us as to what the decision of the committee is on this motion, please, when it is made?

The CHAIRMAN. We will attempt to do that; yes.

Mr. WILLIAMS. Thank you, sir.

The CHAIRMAN. We have here a series of letters from Senator Flanders. I don't know what they contain. Whether they will be considered or not will be left up to the committee.

Senator STENNIS. They are not in evidence, are they?

The CHAIRMAN. They are not in evidence.

Mr. WILLIAMS. I assume the committee will not consider them, Mr. Chairman?

The CHAIRMAN. We are not going to consider them as evidence, that is one thing certain; but whether or not any of the legal points that may be raised as to the law, that will be another question which the committee will pass on.

Mr. WILLIAMS. I wonder if the Chair would direct Senator Flanders to serve on us such things as he serves on this committee expressing his views because we would certainly be interested in what Senator Flanders has to say on the law.

The CHAIRMAN. If we decide to take notice of what he files with us, we certainly will direct that he have them served upon you, or we will do so ourselves. At this moment we have not taken official notice of anything he has sent to us with respect to any of these matters.

Mr. WILLIAMS. We have not either.

The CHAIRMAN. Now, since we are not a court, since we had direct contact, investigative work to be done for the basis of getting all the facts and all the law, when we recess, it will be a recess subject to the call of the Chair but that has not been done yet.

Now, I have done all the talking at this stage, and I am going to call on all the members of the committee if they would like to say something about this entire matter, about counsel, or whatever they would like to say.

The CHAIRMAN. Senator Ervin?

Senator ERVIN. No, sir.

The CHAIRMAN. Senator Stennis?

Senator STENNIS. Well, Mr. Chairman, I have nothing to say except about this motion here with reference to the counsel.

I can fully understand Mr. Williams. It is almost habitual with attorneys to look upon themselves as being adversaries in matters in court, or in a major matter of this kind, but we were looking for men

who were seasoned and learned in the law and who know how to handle facts, men of unquestioned character and integrity, to approach this matter in a nonpartisan, nonpolitical and impartial manner, and not our agents, but our helpers, with reference to the facts, and help us with respect to the law.

That is what they have done.

They have not even been permitted to make objections to the testimony.

For one, I am certain that when we go to decide the controlling facts in the law, that every man, each of the six members is going to have to decide for himself, after getting such information as they can, I think that will be the extent of their services to us; I think that it would be helpful to us on those lines.

I feel the need of their help. At the same time, I feel the same freedom to call on Mr. Williams and will on any point that troubles me as to the law or as to the facts and that would be my attitude on the attorneys.

The CHAIRMAN. Senator Carlson?

Senator CARLSON. Mr. Chairman, just on the motion by Mr. Williams which was certainly interesting and I think is very timely, the point that I would like to raise is that I sincerely hope, as one member of this committee, that we might conclude and secure a report, conclude the hearings and the work of this committee at the earliest possible opportunity. I think that is in the interest of the committee, Senaor McCarthy, and the Senate; and having had some experience, of course, the Chair bore the greatest brunt of this in trying to secure counsel for the committee—I believe it would be equally difficult or even more difficult to try to get new counsel now to evaluate these matters that have been collected here by both counsel for the committee and counsel for Senator McCarthy. It seems to me that if we should follow that recommendation, and I will have to admit it has some merit, we would be delayed, in my opinion, for weeks, and it is for that reason that I sincerely hope that we will give it consideration but with some thought in regard to time rather than just purely on the merits of it.

Senator ERVIN. Mr. Chairman?

The CHAIRMAN. Senator Ervin.

Senator ERVIN. In spite of my silence, I would like to say that what the chairman, Senator Stennis, and Senator Carlson have said express my views.

I would like to say to both Mr. Chadwick, Mr. de Furia, and Mr. Williams, that they have all been very helpful to me and I want to commend all of them, and I want to say that I have admired the way each one of these counsel have approached this matter.

I think they have been a great help to all of the committee—counsel on, as Mr. Williams says, both sides, if you take that position.

The CHAIRMAN. I would like to join with my colleague in saying that as far as I have been able to observe, I have worked very closely with these men and I have the utmost confidence in the fairness of Mr. Chadwick and Mr. de Furia and other members of the investigative staff, and I can repeat again that they were given directions to get all the facts no matter whose position they supported, or whose position they made untenable and that they were to brief all of it, get

everything that bore on the subject; that could, by the remotest suggestion be important to a decision or throw light on the decision to be made.

I think they have done that.

As I indicated during the course of this hearing, it is a difficult matter for men who have been used to practicing in courts to step into proceedings of this kind.

It is about the only place in the world where you will find a proceeding of this kind where they have to do the investigative work on both sides and be as fair as possible, as humanly possible impartial in the gathering of the facts and in the presentation of the law.

The fact that they may differ in some respects with the distinguished Senator, distinguished counsel for Senator McCarthy, is no indication in my opinion that they have not tried their level best to be fair.

On the matter of objections and so on, I have advised them in the beginning they could not make objections. It would be up to the Chairman to follow the proceedings closely and to indicate when he thought the matter was getting out of bounds, the hearing was getting out of bounds on a particular issue that was raised.

Now, we have attempted to do that. I realize that is somewhat new. Too many times in hearings, particularly with reference to hearings on appointments made by the President, held by the committees, there has been a tendency to allow the Senator who might object to one of the appointments to be the prosecuting attorney, or the plaintiff, and the appointee to be the defendant. I think that has resulted many times in bringing the Senate and its procedure into disrepute before the people. It should be a Senate function just like it is a function of the President when he makes the appointment, before he makes it, to get all the facts he can with respect to the appointee. We have to advise and consent and under those circumstances, we should likewise be just as fair about it as we can, and conduct that type of a hearing. This is, in my opinion, something after that nature. We are not a court; we cannot make any final decision. We have gathered the facts. We report the facts to the Senate as we have them. We give the entire record. It is all printed and submitted and each Senator will have a copy and we also have the authority if we so desire, to make some conclusions of law and make recommendations.

Now, whether we will go so far as to make recommendations has not been determined by this committee. I think we might be able to discharge our duty by not making any recommendations.

On the other hand, it has been the custom for committees to make recommendations. Just what we will do in that matter the future will have to determine.

I want to also express my appreciation to Mr. Williams, Senator McCarthy, for the way they have been able to cooperate with us in this search. I realize the situation became tense at times but that is no more than what happens usually in investigations, particularly if there has been any controversy, or high emotional state of public mind connected with it.

I also express my appreciation on behalf of the whole committee for the cooperation we have received all around.

The committee will be in recess subject to the call of the Chair.

(Whereupon, at 5:18 o'clock p. m., the committee recessed subject to reconvening at the call of the Chair.)

HEARINGS ON SENATE RESOLUTION 301

FRIDAY, SEPTEMBER 17, 1954

UNITED STATES SENATE,
SELECT COMMITTEE TO STUDY CENSURE CHARGES
PURSUANT TO SENATE ORDER ON SENATE RESOLUTION 301,
Washington, D. C.

The select committee met, pursuant to call, at 3:20 p. m., in room 422, Senate Office Building, Senator Arthur V. Watkins, chairman, presiding.

Present: Senator Watkins (chairman), and John M. Jex, clerk of the committee:

The CHAIRMAN. Pursuant to an understanding reached in public session of the Select Committee of Censure under Senate Resolution 301, Senate Parliamentarian Charles L. Watkins has appeared for the purpose of answering the questions referred to in that understanding.

Mr. Watkins, you are the Parliamentarian of the United States Senate?

Mr. WATKINS. I am.

The CHAIRMAN. Your name is Charles L. Watkins?

Mr. WATKINS. That is right; yes, sir.

The CHAIRMAN. And you have been Parliamentarian how long?

Mr. WATKINS. Since 1935, when the Senate gave me the title of Parliamentarian and Journal clerk. From 1919 to that time I had been the Journal clerk of the Senate, and had also acted as Parliamentarian since 1924.

The CHAIRMAN. You have served the Senate of the United States how long?

Mr. WATKINS. The 1st of December this year will be 50 years, lacking a few months that I was temporarily off the Senate roll and on the personal payroll of Senator James P. Clarke, of Arkansas. About 49 years at the present time.

From 1904 until 1914, except the few months referred to above, I was in the office of Senator Clarke, but, of course, drawing my salary from the United States Senate.

The CHAIRMAN. Senator Clarke of what State?

Mr. WATKINS. Arkansas. James P. Clarke, of Arkansas.

The CHAIRMAN. You were one of his secretaries?

Mr. WATKINS. Yes. At that time he only had two employees, a secretary and a stenographer.

The CHAIRMAN. And you were carried on the payroll as a secretary?

Mr. WATKINS. I first entered his employ in 1904 as a stenographer, but in 1907 I was given the position of his secretary, which I held until 1913. I was given a patronage position in 1914 in the office of the Secretary of the Senate, after the Democrats had gotten control of the Senate in 1913.

The CHAIRMAN. And you have been with the Senate ever since?

Mr. WATKINS. Ever since.

The CHAIRMAN. Mr. Watkins, I have prepared a letter to you which I think states rather clearly the problems to be submitted to you and an outline of the background. I am going to read that letter to you so we will have it in the record, and when we come to the questions mentioned therein you can answer each one as we go along.

The letter is under date of September 17, 1954:

DEAR MR. WATKINS: I have been requested by the entire membership of the select committee of the Senate to obtain your opinion as Parliamentarian of the Senate upon the following questions concerning the constitution and membership of the Subcommittee on Privileges and Elections of the Committee on Rules and Administration, as the same was in the year 1952, during the period following the resignation of Senator Monroney, and between January 1, 1953, and the date when the new committees of the 83d Congress were organized.

It is my understanding, always subject to your information, that this committee was organized in the 82d Congress with five members, namely, Chairman Gillette and Senators Welkers, Hennings, Monroney, and Hendrickson, and that subsequently Senators Welker and then Senator Gillette resigned, and Senator Hennings became chairman.

Mr. WATKINS. I have no official knowledge of that, but that is my understanding, just based on, you might call it, hearsay.

The CHAIRMAN. Yes.

Mr. WATKINS. Of course, the records, themselves, would show that.

The CHAIRMAN. That is right. I don't think there is any dispute on the record.

Quoting still further from the letter:

Later Senator Monroney was in Europe at a time when business of the subcommittee was pressing. Chairman Hayden of the Rules Committee thereupon asked him to return or, in the alternative, to submit his resignation. The latter course was pursued. Senator Hayden accepted the resignation and appointed himself as the third member. This three-man committee functioned until the reorganization of the 83d Congress and has been continued since that time as a three-man committee.

This recital of facts, while we believe it to be correct, is not intended to control your opinion but, rather, to supply our background for the following questions:

"1. In your opinion, was the three-man subcommittee, as constituted by Senator Hayden, after the resignation of Senator Monroney, by appointing himself as a third member, a legal committee for the discharge of regular business, under the rules and precedents of the Senate?"

Mr. WATKINS. We have very few precedents of direct action by the committees. Usually matters of this kind are settled in the committees, themselves, and no written report is made to the Senate for the Senate to pass upon.

Paragraph 2 of rule 3 of the standing rules of the Senate, relating to commencement of daily sessions, says:

"A quorum shall consist of a majority of the Senators duly chosen and sworn."

I think the general supposition is that, unless the committee has regulations in contravention of the Senate rules, the Senate rules, wherever applicable, would govern its proceedings.

On that basis, while the subcommittee was authorized for 5 members, when 2 members resigned and that was followed by the resignation of Senator Monroney and the appointment by Senator Hayden, the chairman of the Committee on Rules and Administration, of himself to fill the vacancy, that constituted a majority of the 5-man subcommittee.

The CHAIRMAN. Could that majority conduct the business of the committee?

Mr. WATKINS. I think it could. That is my opinion. I think they could for the reason that three constituted a majority of the authorized subcommittee membership; and, as far as I know, there is no mandatory requirement for a chairman of a committee to fill any vacancy on subcommittees.

The CHAIRMAN. No mandatory requirement?

Mr. WATKINS. No.

The CHAIRMAN. You mean he does not have to?

Mr. WATKINS. He does not have to.

The CHAIRMAN. But before the committee could act, he would at least have to have a majority?

Mr. WATKINS. I think he would have to have a majority of the entire authorized membership of the subcommittee, which was the case when he appointed himself.

The CHAIRMAN. I will continue with this letter:

This question apparently involves the authority of the chairman of the Rules Committee, Senator Hayden, to make the appointment of himself from the full committee to the subcommittee at a time when the Senate was not in session.

Would that make any difference? Would he have the authority to appoint himself?

Mr. WATKINS. I have a precedent of the Senate here, on August 24, 1912, citing the Congressional Record, 62d Congress, 2d session, page 11812, in which it is stated that Mr. Luke Lea, of Tennessee, because of illness in his family, asked to be relieved from further service as a member of a subcommittee of the Committee on Privileges and Elections investigating campaign expenses in the elections of 1904 and 1908.

Now, this request was made to the Senate, itself, by Senator Lea.

The President pro tempore, Mr. Jacob H. Gallinger, of New Hampshire, said that would seem to be a matter for the committee rather than for the Senate.

Mr. Lea stated he took up the matter with the chairman of the subcommittee and that he had no objection, and Mr. Boies Penrose, Senator from Pennsylvania, then said:

It is very clear that the chairman of the subcommittee has not the power to fill vacancies. That resides in the chairman of the Committee on Privileges and Elections.

At that time this was a standing committee of the Senate.

The President pro tempore said:

"That is what the Chair would hold."

So, in view of this precedent—the only one I know of—the chairman of the Rules and Administration Committee did have the right to fill that vacancy on the subcommittee by appointing himself. If he had seen proper or if it had been advisable, he could have appointed any other member of the Committee on Rules and Administration to that subcommittee.

The CHAIRMAN. Would the fact that he did not submit this appointment, which he made of himself to the subcommittee, to the full committee for approval have any effect in making invalid his appointment?

Mr. WATKINS. I think, generally speaking, the chairman of a committee, under custom at least, has the power and the right to appoint members of subcommittees without submitting them to the full committee.

The CHAIRMAN. And that would be particularly true, would it not, where the Senate was not in session?

Mr. WATKINS. Yes, where the Senate was not in session, as probably the other members of the committee were at their homes or perhaps various places in the country.

The CHAIRMAN. Now, in respect to the answer you have just given on the question of whether Senator Hayden had the right to appoint himself or any other member a member of the Subcommittee on Privileges and Elections, would it make a stronger case if at the time the Senate was not in session and there were pressing matters pending before the said subcommittee which required a quorum in order to act?

Mr. WATKINS. It might add some weight to the emergency of the situation. It might have required someone to be appointed to fill that vacancy and raise the subcommittee up to a point where it could become operative as a valid subcommittee.

The CHAIRMAN. Would it, under such circumstances, be necessary for Senator Hayden to have the approval of the full committee before he made such an appointment?

Mr. WATKINS. I don't think it would, unless there is some provision in the rules of the committee that requires the chairman of the committee, in making subcommittee appointments, to advise or report to the full committee for their approval.

I don't know what the rules of the Committee on Rules provide; but, generally speaking, I doubt if there are any rules in any of these committees now that require, in every case, formal approval by the members of the committee itself of the appointments to subcommittees.

The CHAIRMAN. Particularly during the time when the Senate is not in session?

Mr. WATKINS. That is particularly true when the Senate is not in session and the members of the committee perhaps are scattered over the various States of the Union.

The CHAIRMAN. Then, under those circumstances, it would be your opinion, as I understand you, that Senator Hayden would have the right to make the appointment to fill a vacancy without submitting it for approval of the whole committee?

Mr. WATKINS. That is my judgment.

The CHAIRMAN. No. 2:

In your opinion, was Senator Hayden required to appoint two new members of the subcommittee to fill the vacancies resulting from the resignation of Senators Gillette and Welker?

Mr. WATKINS. Following the practice in the Senate itself, I don't think he would be required to make appointments to raise it up to the authorized number.

Now, we frequently have special committees created where the Vice President is authorized to appoint, under special resolution, a certain

number of Senators, and sometimes there are instances where those committees go beyond the Congress. Some of the members may have been defeated or resigned, which created vacancies, and there have been cases where the Vice President never did make any appointments to fill the vacancies. He just let those special committees rock along; and I think, by analogy, probably the same rule might apply to subcommittee procedure.

The CHAIRMAN. That would be true as long as they had at least a majority?

Mr. WATKINS. As long as there was a majority of the authorized membership actually serving.

The CHAIRMAN. Because then they could do business?

Mr. WATKINS. They could do business to the same extent as if they had the authorized membership.

The CHAIRMAN. No. 4:

Did Senator Hayden have the authority at such time to recognize Senator Hennings as the chairman of said subcommittee?

Mr. WATKINS. I would think that Senator Hayden did have authority to appoint a new chairman of that acting three-man subcommittee.

The CHAIRMAN. Then when he recognized Senator Hennings and called him chairman, that in effect was an appointment as chairman?

Mr. WATKINS. It would imply that he was chairman. Senator Hayden would be the only man who would have the authority to appoint a chairman by reason of the fact he was chairman of the Committee on Rules and Administration.

The CHAIRMAN. And he could appoint the chairman?

Mr. WATKINS. He could appoint the chairman of that subcommittee.

The CHAIRMAN. No. 5:

Was said subcommittee, as organized with three members, capable, by a working majority, to determine such matters as what should constitute a legal quorum for the taking of testimony, including the right to designate one member as a legal quorum for such purpose?

Mr. WATKINS. I think there is a provision in the Reorganization Act which also, for practical purposes, is a part of the Senate rules and which empower a committee or subcommittee to authorize the appointment of one Senator for the purpose of taking testimony.

The CHAIRMAN. In other words, they could recognize a quorum of one for the purpose of taking testimony?

Mr. WATKINS. There is a provision in the rules, I think. I will look at the Senate rules.

The CHAIRMAN. I know the courts have so held.

Mr. WATKINS. I think, if my recollection is correct, there is a direct amendment of the Senate rule in this Reorganization Act, as amended.

Here it is: Paragraph (b) of subdivision 3 of rule 25:

Each standing committee, and each subcommittee of any such committee, is authorized to fix a lesser number than one-third of its entire membership who shall constitute a quorum thereof for the purpose of taking sworn testimony.

So I think that would give the subcommittee the right to designate one Senator to take sworn testimony.

The CHAIRMAN. And the answer to No. 5 would be yes?

Mr. WATKINS. Yes.

The CHAIRMAN. No. 6:

Was the said subcommittee, so organized, authorized to make a report to the full committee, signed by its three members, Senators Henning, Hayden, and Hendrickson, and filed with the full Committee on Rules and Administration, with Senator Hayden as chairman?

Mr. WATKINS. I think the subcommittee of three members had the right, and, after they had reached a conclusion and drafted a report, it was their duty, to submit it to the full Committee on Rules and Administration.

The CHAIRMAN. No. 7:

In September of 1951, Senate Resolution 187 was referred to the Committee on Rules and Administration. This was a resolution introduced by Senator Benton looking toward the expulsion of Senator McCarthy from the United States Senate. The resolution was in turn referred to the Subcommittee on Privileges and Elections. On September 28, 1951, the Subcommittee on Privileges and Elections began holding hearings on this resolution. The constituency of the subcommittee at this time was Senators Gillette, Henning, Monroney, Welker, and Hendrickson. In September of 1952, while the proceedings were still underway, Senators Welker and Gillette resigned. They were not replaced. In November of 1952 Senator Monroney resigned and Senator Hayden appointed himself on the subcommittee to replace him. Thus, only 2 of the original 5 Senators who had heard the evidence during the first year of the investigation remained. In a quasi-judicial proceeding such as an expulsion matter can a subcommittee file a valid legal report when less than half of its members have heard the evidence?

Mr. WATKINS. I would think so. The subcommittee had power to act. The 3 members, being a majority of that subcommittee, could file a report with the full committee even though, in my judgment, 1 of the Senators had not heard the testimony.

The CHAIRMAN. There would be no assumption that he had not considered the testimony even though he had not heard it?

Mr. WATKINS. He might have had or would have had an opportunity to read the printed hearings.

The CHAIRMAN. Or the transcript?

Mr. WATKINS. Yes; the transcript.

The CHAIRMAN. Prepared by the reporter?

Mr. WATKINS. Yes.

Applying the same rule in Senate proceedings, Senators would have a right to vote when they haven't heard a single speech or don't know anything about a proposition at all.

The CHAIRMAN. And yet they vote?

Mr. WATKINS. They come in there and vote.

The CHAIRMAN. And they could do that if this committee had reported favorably a resolution to expel, say, Senator X?

Mr. WATKINS. That is right.

The CHAIRMAN. Any of the Members of the Senate or all of the Members of the Senate could come in and vote even though they had not heard any of it?

Mr. WATKINS. They would be required to vote, under the rule, on a rollcall vote if they were present.

The CHAIRMAN. That seems to cover it, Mr. Watkins. The committee thanks you.

(Whereupon, at 3:48 p. m., the committee adjourned.)

HEARINGS ON SENATE RESOLUTION 301

THURSDAY, SEPTEMBER 23, 1954

UNITED STATES SENATE,
SELECT COMMITTEE TO STUDY CENSURE CHARGES,
PURSUANT TO SENATE ORDER ON SENATE RESOLUTION 301,
Washington, D. C.

The select committee met, pursuant to call, at 5:35 p. m., in room 442, Senate Office Building, Senator Arthur V. Watkins (chairman) presiding.

Present: Senator Watkins (chairman).

Also present: Edward Bennett Williams, counsel to Senator McCarthy.

The CHAIRMAN. This can be tied right in with the other, is that all right?

Mr. WILLIAMS. Yes.

The CHAIRMAN. In order to give Senator McCarthy's attorney, Mr. Williams, an opportunity to cross-examine Mr. Watkins, the parliamentarian of the Senate, he has been recalled and he is now present, ready for such cross-examination. He was giving opinion evidence, which is the reason for my not putting him under oath.

Mr. WILLIAMS. I do not make any point of Mr. Watkins not being under oath.

STATEMENT OF CHARLES A. WATKINS, PARLIAMENTARIAN OF THE SENATE OF THE UNITED STATES

Mr. WILLIAMS. Mr. Watkins, I wanted to ask you just a couple of questions of a parliamentary nature, and they turn around the activities of what I refer to as the "Gillette committee," which consisted originally of Senators Gillette, Welker, Monroney, Hennings, and Hendrickson; and, by way of orientation, that was the Subcommittee on Privileges and Elections, to which Senate Resolution 187 was referred, in September 1951.

Mr. WATKINS. Well, you mean the resolution, itself, was referred to the Committee on Rules and Administration?

The CHAIRMAN. Yes.

Mr. WATKINS. And the chairman evidently referred that to this Subcommittee on Privileges and Elections.

Mr. WILLIAMS. Yes, sir.

Now, when the chairman questioned you last Friday, in one of his questions he pointed out to you that, in September 1952, Senators Welker and Gillette resigned from this committee and, in November 1952, Senator Monroney resigned; and, thereafter, Senator Hayden appointed himself as a member of the subcommittee.

Now, one of the questions that was asked of you, Mr. Watkins, was whether or not that committee which had originally started as a committee of 5, could operate as a committee of 3; is that right? Do you remember being asked that?

Mr. WATKINS. Yes; that is right.

Mr. WILLIAMS. And, as I read your testimony, it is your opinion that the committee could function and could operate as a committee of 3, with 3 members participating.

Mr. WATKINS. That is my judgment about it.

Mr. WILLIAMS. And in your testimony, as I read it, you cited paragraph 2 of rule III of the Standing Rules of the Senate, which provides:

A quorum shall consist of a majority of the Senators duly chosen and sworn.

Mr. WATKINS. That is right.

Mr. WILLIAMS. And you then said, as I read your testimony:

Unless the committee has rules in violation or in contravention of the Senate rule, the Senate rules wherever applicable would govern the proceedings.

Mr. WATKINS. That is the general rule.

Mr. WILLIAMS. Now, I gathered, then, that your opinion is that this general Senate rule, which provides that a quorum is present when a majority of the Senators are present, is applicable to the Subcommittee on Privileges and Elections because they have no rules contrary to that?

Mr. WATKINS. Well, I think it is just the general power of a committee or of a subcommittee to operate with a majority.

Mr. WILLIAMS. Yes.

Mr. WATKINS. I do not know that. I am not saying now that the Senate rule would govern that proceeding.

Mr. WILLIAMS. But generally the Senate rule, as I read your testimony, and as I understand your testimony now, the Senate rule applies, in the absence of any committee rule to the contrary.

Mr. WATKINS. I would think it would as a general proposition. I think the House of Representatives has a rule that makes a procedure of the House applicable to its standing committees when they have no rule that would be in contravention of the House.

Mr. WILLIAMS. Yes; and, as Parliamentarian of the Senate, it is your opinion that that same principle applies to the Senate committees?

Mr. WATKINS. I would think so; yes.

Mr. WILLIAMS. Now, you know, do you not, Mr. Watkins, that the Committee on Rules and Administration has no rules of its own?

Mr. WATKINS. I do not know that to be a fact.

Mr. WILLIAMS. Well, I would ask the Chair to take judicial notice of that fact, and I know that an inquiry would have to be made, but I have made such an inquiry, and I have learned that there are no rules of procedure in effect, either for the Committee on Rules and Administration or the Subcommittee on Privileges and Elections, which is a subcommittee of the Committee on Rules and Administration.

The CHAIRMAN. I do not know anything about that, whether there is or not.

Mr. WILLIAMS. I think the committee can judicially notice the rules of the Senate and the rules of the committees of the Senate.

The CHAIRMAN. Yes, we can; but I say we have not—I have not talked with—

Mr. WILLIAMS. I am going to ask the committee to judicially notice this, after it has checked it by asking the clerk of that committee.

(There was further discussion off the record.)

Mr. WILLIAMS. I simply want the record to show that I have formally requested the committee to notice judicially that the Committee on Rules and Administration, and its Subcommittee on Privileges and Elections, have no rules of their own governing their procedures.

Now, Mr. Watkins, I call your attention to rule XXIV of the Standing Rules of the Senate——

Mr. WATKINS. On the appointment of committees.

Mr. WILLIAMS. And I direct your attention to the last sentence of the first paragraph of that rule, which provides that——

All other committees shall be appointed by ballot, unless otherwise ordered, and a plurality of votes shall appoint.

Now, would not that rule, Mr. Watkins, apply to the committees in the absence of a committee rule to the contrary?

Mr. WATKINS. It would apply to the standing committees, to the full committees. That is all that rule deals with——just the standing committees of the Senate.

Mr. WILLIAMS. Now, on the principle that you have just told us about, namely, that where the standing committees have no rules of procedure of their own, opposed to the regular rules of the Senate, would not this rule of the Senate apply to the standing committee?

Mr. WATKINS. Not necessarily.

Mr. WILLIAMS. Well, now, did you not say, sir, that in your opinion——

Mr. WATKINS. I said——

Mr. WILLIAMS. Excuse me, Mr. Watkins, if I may just state the question for the record.

Mr. WATKINS. Yes.

Mr. WILLIAMS. Did you not say that, in your opinion, where there were no rules of the committee, itself, the rules of the Senate would apply to the procedures and actions of the committee? Did you not say that, in relation to the quorum question?

Mr. WATKINS. Yes. If a matter came up, and my opinion were asked about it, I would say, generally speaking, that would be the truth; that would be true.

Mr. WILLIAMS. Now, would it not likewise be true in relation to rule XXIV, just as it was true in relation to rule III?

Mr. WATKINS. Rule No.——

Mr. WILLIAMS. Rule No. III deals with a quorum.

Mr. WATKINS. Yes.

Mr. WILLIAMS. And rule No. XXIV deals with the appointment of committees?

Mr. WATKINS. Standing committees.

Mr. WILLIAMS. Now, would not rule XXIV be just as applicable to the activities and operations of a committee of the Senate, as rule No. III, in the absence of some individual committee rule to the contrary?

Mr. WATKINS. I do not know just exactly what you mean by that.

Mr. WILLIAMS. Well, I will see if I can make it clear, sir.

I understood your testimony to be, on last Friday——and I understood it to be the same, here, today——and I will read to you from it:

Unless the committee has rules in violation or in contravention of the Senate rule, the Senate rules wherever applicable would govern the proceedings.

I understood that to be your testimony, both last Friday, and again, here, today.

Mr. WATKINS. Yes; that is what I stated.

Mr. WILLIAMS. Now, my question is, Would not rule XXIV be just as applicable to a committee as rule No. III in the absence of any committee rule to the contrary?

Mr. WATKINS. Rule No. III, I think deals with——

Mr. WILLIAMS. This rule, right here [indicating].

Mr. WATKINS. "Commencement day of the session."

Mr. WILLIAMS. The quorum.

Mr. WATKINS. Oh, paragraph 2. Well, the Constitution provides that there must be a quorum in the Senate to transact business—not only the rule, but the Constitution, itself, as I recall.

Mr. WILLIAMS. Now, my question is this, though, Mr. Watkins: Would not rule XXIV be just as applicable to the procedures of a committee as rule III, in the absence of a committee rule to the contrary, in accordance with the opinion which you expressed?

Mr. WATKINS. Well, with reference to the standing committees of the Senate, I think it probable that very few of them have rules. They have customs. Now, the customs are not all uniform as to committee procedure. I think that is an established fact, by reason of what has occurred within the past year or two, though a committee may select its own procedure. Quite often the committees have a procedure of their own. It may not have been adopted by formal action of the committees; it is just a practice or a custom that has grown up.

The CHAIRMAN. Could I ask a question, there? And has it not been accepted by almost the unanimous consent of the committees and universal observance by the committees?

Mr. WATKINS. It has. Probably very few of the committees have uniform rules—some of them do not have any at all. Some of them do, I think, have written rules, adopted by the committee.

Mr. WILLIAMS. Now, if they do not have any rules, your testimony is that the rules of the Senate apply; is not that correct?

Mr. WATKINS. Yes, I would say that, if anybody made a point of it in a committee; but, as long as nobody raises any question about the procedure, I do not think it would make much difference whether the rules applied or not. I think there would probably have to be some point made on that.

In other words, the procedure of the committee, or the custom of the committee, would have to be attacked, I think, in a meeting of the committee, itself. Then, if that point is raised, and the committee had no rules, I think the application of the Senate rules, if they were applicable, would be proper.

Mr. WILLIAMS. Now, the Senate rules provide that committees shall be appointed by ballot, do they not?

Mr. WATKINS. Unless otherwise ordered.

Mr. WILLIAMS. Yes. Now, if a committee has no rules on the appointment of subcommittees, would not the Senate rule apply, and would not the subcommittee be appointed by ballot?

Mr. WATKINS. No, because the Senate has no rule on subcommittees at all. It only deals with the standing committees. About the only reference in the rules of the Senate is that any duly authorized subcommittee thereof may transact business.

Mr. WILLIAMS. It has no rules on the quorum of the committee, either, does it?

Mr. WATKINS. It does. Yes, they have a rule on that. I think, under the Legislative Reorganization Act, and in certain cases, it could authorize the transaction of business by less than a majority, but more than one. That is part of the Senate rules; but, in reporting a bill to the Senate, there must be a majority of the actual number on the committee present; and in certain cases, the committee, or a subcommittee, may authorize the taking of sworn testimony by less than one-third of its membership.

Mr. WILLIAMS. So that you, as I understand your testimony now, do not feel that the principle which you held for last Friday, that unless the committee has rules in violation or contravention of the Senate rule, the Senate rules would govern the procedure? You do not feel that that procedure is applicable to the selection of subcommittees by a Senate committee?

Mr. WATKINS. I do not think it would be, for the reason that the Senate has no rule whatever governing subcommittees, as far as I know.

Mr. WILLIAMS. But it does have rules governing the selection of committees, does it not?

Mr. WATKINS. Standing committees are selected by the Senate itself.

The CHAIRMAN. The committees to which you refer are those set up in the Legislative Reorganization Act, are they not?

Mr. WATKINS. Yes. They are standing committees. I believe there are 15 of them, now; I would not be certain. But there is nothing that I observe in it that hits at any rule of the subcommittee, because I think the Senate leaves that to the committees, themselves, to fix the rules of their own procedure, when they want to do that.

Mr. WILLIAMS. Now, Mr. Watkins, as Parliamentarian of the Senate, do you agree that a proceeding looking toward the expulsion of a Senator is a quasi-judicial proceeding, and that the Senate is sitting in that quasi-judicial capacity?

Mr. WATKINS. I do not know that they would sit in any different capacity than they would on anything else—than they would in passing on the credentials of a Senator-elect who might be subject to challenge.

Mr. WILLIAMS. Do you disagree with the precedence that Hines and Cannon cite, and that Willoughby cites, saying that expulsion proceedings have been regarded as proceedings wherein the Senate is exercising its quasi-judicial function?

Mr. WATKINS. I am not familiar with those precedents.

Mr. WILLIAMS. I notice that, near the end of your testimony, here, last Friday, you said that, notwithstanding that, when the committee report was filed on January 2, 1953, by Senators Hayden, Hendrickson, and Hennings—notwithstanding the fact that only 2 of the original 5 Senators who began hearing the evidence in the case were still on the committee, that that report was a valid report.

Mr. WATKINS. Yes, in my judgment.

Mr. WILLIAMS. Now, would that still be true, if only two of the Senators had heard the evidence in the case?

Mr. WATKINS. I think so, because they were a duly constituted committee of three members when that report was made.

Mr. WILLIAMS. In other words, is it your opinion that the Senate can start the proceeding looking toward the expulsion of a United States Senator, with 5 Members, it may then cut the number to 3, and

it may then replace 1 of the 3 with a new man, so that only 2 of the original 5 were present, and only 2 have heard the evidence, and that they can report as a full committee?

Mr. WATKINS. I think 3 men, certainly, in my judgment, could make a report; and that report, as I understand it, was signed by all 3 of the members at the time it was filed.

Mr. WILLIAMS. Would it affect your judgment on this matter if one of the members had not heard or read the evidence?

Mr. WATKINS. I do not think it would affect the right of the committee to make a report.

Mr. WILLIAMS. In other words, it is your opinion that 2 out of 5 members of a subcommittee can report?

Mr. WATKINS. Now, we only have 3 acting members on that subcommittee, with 2 vacancies.

Mr. WILLIAMS. There were five to start with?

Mr. WATKINS. With two vacancies there.

Mr. WILLIAMS. It started with five, did it not?

Mr. WATKINS. They started with 5; 2 resigned; that left 3—a majority of the committee.

Mr. WILLIAMS. And then 1 of the 3 resigned, did he not?

Mr. WATKINS. Yes; and then, until that third member was appointed, that committee was powerless to act with only two members. They could not act until that vacancy was filled—until one of the vacancies was filled.

The CHAIRMAN. You mean by that, when the vacancy was filled, they then would have three?

Mr. WATKINS. Yes.

The CHAIRMAN. And that restored the power of the committee?

Mr. WATKINS. That restored the actual number of members serving on that committee to 3; which is a majority of the 5 originally authorized.

Now, I might say it is common knowledge that these committees, in passing on legislative matters and everything, frequently do it by much less than the full membership.

Mr. WILLIAMS. I know they do it, in passing on legislative matters. Do you think they can do it in passing on matters wherein they are exercising their quasi-judicial function?

Mr. WATKINS. Well, I will not give an answer on that, because I am not familiar with that. Of my own knowledge, I do not know whether that would be an ordinary proceeding, or a quasi-judicial proceeding; but this committee has no power of its own to pass judgment on anybody; that is to say, this committee could not. They could recommend that a Senator be expelled, but they have no power to expel him. They just simply make a report to the Senate of their findings, and then the Senate itself is the only body that passes on the question of the expulsion of a Senator.

Mr. WILLIAMS. How can they make a report of their findings if they have not heard it?

Mr. WATKINS. Well, an opportunity would be given to that man who has not heard the testimony, to read the printed testimony previously; or if that was not available in printed form, he certainly would have an opportunity to read the transcript and familiarize himself with the situation.

Mr. WILLIAMS. Would you think that would be necessary for him to do, before he could become legally qualified to affix his name to the report?

Mr. WATKINS. I do not think it would be; because he is a member of the committee, and, if he had not heard the evidence, I do not think that would affect his right to sign the report.

Mr. WILLIAMS. In other words, following your opinion to its logical conclusion, Mr. Watkins, if none of the members of the so-called Gillette committee, at the end of 1952, had heard any of the evidence on their Senate Resolution 187, they still would have been legally empowered to make a report to the Senate?

Mr. WATKINS. Not a subcommittee. A subcommittee must report to the full committee.

Mr. WILLIAMS. They would have been legally empowered to make a report to the full committee?

Mr. WATKINS. I think so—legally. I am speaking, now, from a legal standpoint.

Mr. WILLIAMS. Notwithstanding the fact that none of them had heard the evidence?

Mr. WATKINS. That is right.

Mr. WILLIAMS. That is all.

The CHAIRMAN. Mr. Watkins, would there not be an assumption, ordinarily, that no committee, and no man, on a matter of that sort, would sign his name, unless he had either heard or read the testimony in the record?

Mr. WATKINS. Well, they sign their names, now, to certain facts that are set out in that report; and evidently they would know something about those facts.

The CHAIRMAN. This is material. I do not know whether this would come within your province or not, but, as a matter of law, if they sign a report and make it their official action, the assumption would be that they had heard or read it.

Mr. WATKINS. I think the presumption is that they are familiar with whatever they sign their names to, in the way of a report.

Mr. WILLIAMS. Do you know whether Senator Hayden read the evidence on Senate Resolution 187?

Mr. WATKINS. No; I do not; I do not.

Mr. WILLIAMS. So that your testimony on Friday was based on the gratuitous assumption that he had?

Mr. WATKINS. No; he did not say that he had, at all. He did not say that.

Mr. WILLIAMS. But, for the purposes of your answers, you assumed that he had; did you not?

Mr. WATKINS. No, no. Can you find that in the record?

The CHAIRMAN. I think I called it to your attention in something I asked you just a few moments ago; that is, whether you would assume there was a possibility that they would read it, even if they had not sat and listened to it. They could read it?

Mr. WATKINS. There was a question of Senator Hennings' being addressed as "chairman" or "Mr. Chairman"; and I think he asked me, now, if I knew whether he had been appointed as chairman.

The CHAIRMAN. Well, I do not remember that.

Mr. WILLIAMS. I have no further questions on this, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Watkins, for coming before the committee.

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